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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN DEFENSE OF ANIMALS and  
FRIENDS OF THE EARTH,  
on behalf of the general public,

CASE NO.: 3:20-cv-5293 (RS)

## Plaintiffs,

V.

SANDERSON FARMS, INC.

**Defendant.**

**FIRST AMENDED COMPLAINT FOR  
UNFAIR COMPETITION AND FALSE  
ADVERTISING**

Plaintiffs In Defense of Animals (IDA) and Friends of the Earth (FoE), by their attorneys, allege the following upon information and belief, except for those allegations pertaining to Plaintiffs, which are based on personal knowledge:

1  
2                   **NATURE OF THE ACTION**

3         1. This case is brought on behalf of Plaintiffs and the general public regarding  
4 Sanderson's farming practices and advertising of its Chicken Products, as listed *infra* ¶ 86 (the  
5 "Products"). Defendant Sanderson Farms, Inc. ("Sanderson") sold these Chicken Products based  
6 on false, misleading, unfair, unlawful, and fraudulent representations and practices.

7         2. Sanderson's advertising and label misleads consumers in four ways:

8                 a. Sanderson's advertising misleads consumers into believing that Sanderson's  
9                         chickens were not given antibiotics or other pharmaceuticals;

10                 b. Sanderson's advertising misleads consumers into believing that the chickens  
11                         were raised in a natural environment;

12                 c. Sanderson's advertising misleads consumers into believing that there is no  
13                         evidence that the use of antibiotics and other pharmaceuticals in poultry  
14                         contributes to the evolution of antibiotic-resistant bacteria; and

15                 d. Sanderson's advertising misleads consumers into believing that the Products do  
16                         not contain any antibiotic or pharmaceutical residue.

17         3. However, the truth is that the feed Sanderson routinely gives to its chickens  
18 contains antibiotics and pharmaceuticals; the chickens are raised indoors in crowded and dirty  
19 industrial sheds, which is one reason why its routine use of antibiotics is necessary; there is  
20 extensive reliable evidence that the use of antibiotics in poultry contributes to antibiotic-resistant  
21 bacteria; and Sanderson's chickens have been found to contain antibiotic and/or pharmaceutical  
22 residue.

23         4. The ongoing coronavirus global pandemic has highlighted how unsanitary animal  
24 raising and slaughtering practices, like Sanderson's, contribute to calamitous consequences for  
25 public health. The Centers for Disease Control estimates that three out of every four new or

1 emerging infectious diseases in people come from animals.<sup>1</sup>

2       5. Antibiotic use in poultry, such as Sanderson's routine use for every flock, has  
 3 contributed to antibiotic resistance.<sup>2</sup> Resistant bacterial strains in poultry spread to humans, which  
 4 causes a risk to human health, specifically to poultry workers.<sup>3</sup> Poultry workers labor in tight  
 5 conditions in slaughterhouses, which have become hotspots for coronavirus, including Sanderson  
 6 slaughterhouses.<sup>4</sup>

7       6. The prevalence of antibiotic resistant bacteria is relevant in the battle against the  
 8 coronavirus pandemic. The Director of the Antibiotic Resistance Action Center at the Milken  
 9 Institute for Public Health at George Washington University<sup>5</sup> has stated that antibiotic resistant  
 10 bacteria "are going to be what ultimately kills a large portion of COVID-19 victims as they  
 11 succumb to secondary bacterial pneumonia."<sup>6</sup>

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14 <sup>1</sup> Centers for Disease Control and Prevention, available at  
<https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html#:~:text=Scientists%20estimate%20that%20more%20than,States%20and%20around%20the%20world.,> last visited July 2020.

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16 <sup>2</sup> Alonso-Hernando, A., Prieto, M., Garcia-Fernandez, C., Alsonso-Calleja, C., Capita, R. (2012). Increase over time in the prevalence of multiple antibiotic resistance among isolates of *Listeria monocytogenes* from poultry in Spain. *Food Control*, 23 (1), 37-41.  
<https://doi.org/10.1016/j.foodcont.2011.06.006>, last visited July 2020.

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18 <sup>3</sup> Apata, D.F. (2009). Antibiotic Resistance in Poultry. *International Journal of Poultry Science*, 8 (4), 404-408. Agada, G.O.A., Abdullahi, I.O., Aminu, M., Odugbo, M., Chollom, S.C., Kumbish, P.R., Okwori, A.E.J. (2014). Prevalence and antibiotic resistance profile of *Salmonella* isolates from commercial poultry and poultry farm handlers in Jos, Plateau State, Nigeria. *Microbiology Research Journal International* 4(4), 462-479. <https://doi.org/10.9734/BMRJ/2014/5872>.  
 Silbergeld, E.K., Graham, J., and Price, L.B. (2008). Industrial food animal production, antimicrobial resistance, and human health. *The Annual Review of Public Health* 29, 151-169. [10.1146/annurev.publhealth.29.020907.090904](https://doi.org/10.1146/annurev.publhealth.29.020907.090904), last visited July 2020.

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20 <sup>4</sup> The Bryan, Texas processing plant had 49 COVID-19 cases, as one example at one Sanderson location, reported by the local news, a <https://www.kxxv.com/hometown/brazos-county/49-covid-19-cases-reported-at-sanderson-farms-in-bryan>, last visited July 2020.

21

22 <sup>5</sup> Antibiotic Resistance Action Center, <http://battlesuperbugs.com/directory/lance-price>, last visited July 2020.

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24 <sup>6</sup> Price, Lance B., Ph.D. (2020, April 22). *Superbugs: COVID-19's Coconspirators*. Medium. <https://medium.com/gwpublichealth/superbugs-covid-19s-coconspirators-ebc20b9e0b99>, last visited July 2020. See also Cox, M. Loman, N., Bogaert, D., O'Grady, J. (2020). Co-infections: potentially lethal and unexplored in COVID-19. *The Lancet*, Vol. 1 May 2020. [https://www.thelancet.com/pdfs/journals/lanmic/PIIS2666-5247\(20\)30009-4.pdf](https://www.thelancet.com/pdfs/journals/lanmic/PIIS2666-5247(20)30009-4.pdf).

1       7. Sanderson's advertising makes extensive use of the phrase "100% Natural," to  
 2 emphasize and support its misleading claims, in conjunction with assorted direct falsehoods, half-truths,  
 3 and selective omissions concerning the four misrepresentations described above.

4       8. Sanderson's label prominently emphasized "100% Natural" on its Chicken  
 5 Products for years.

6       9. Plaintiffs and reasonable consumers believe that "100% Natural" means that the  
 7 chickens are not fed or injected with antibiotics or pharmaceuticals, and that accordingly, the  
 8 chickens are not sold with antibiotics or pharmaceutical residue in them and that there is no danger  
 9 of antibiotic use contributing to the development of antibiotic-resistant bacteria, and that the  
 10 chickens are raised in a natural and humane environment.

11      10. The very government regulator who is supposed to be guarding the hen house has  
 12 indicated that labels are not trustworthy. The U.S. Department of Agriculture (USDA), Office of  
 13 Inspector General (OIG) investigated its label review process and concluded that inaccurate labels  
 14 are in commerce. The June 2020 report, titled *Controls Over Meat, Poultry, and Egg Product*  
 15 *Labels*, indicated how unreliable these meat and poultry labels are, even if USDA has approved  
 16 them:

17           As a result, meat, poultry, and egg product labels may reflect  
 18 inaccurate statements and claims made by  
 19 establishments. Additionally, there is reduced assurance that  
 20 establishments' generic labels meet requirements. Based on our  
 21 sample results, we estimated that approximately 2,038 (15.00 percent)  
 22 of the approved required labels and 161 (18.34 percent) of the  
 23 approved generic labels may have one or more exceptions.<sup>7</sup>

24      11. The Animal Welfare Institute also studied meat and poultry labels for many years  
 25 and in September 2019 issued a report titled, *Label Confusion 2.0: How the USDA Allows*  
 26 *Producers to Use "Humane" and "Sustainable" Claims on Meat Packages and Deceive*

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27      28      <sup>7</sup> USDA, Audit Report 24601-0002-23, <https://www.usda.gov/sites/default/files/audit-reports/24601-0002-23.pdf>, last visited May 25, 2021.

1     Consumers.<sup>8</sup> The report is based on approximately four years of Freedom of Information Act  
 2 requests sent to USDA, Food Safety and Inspection Service (FSIS). The Institute determined that  
 3 USDA’s process does not meet consumer expectations, leads to misleading and deceptive  
 4 labeling, and harms farmers who use accurate claims. The report stated at page 5:

5                 Food labels are theoretically used to help consumers make educated  
 6 purchasing decisions. But if consumers do not know the meaning of  
 7 label claims—and have no ability to access that information—an  
 8 educated consumer base does not exist and companies using  
 9 misleading labels receive an unfair competitive advantage.

10         12. Farm Forward, a public interest group, also studied how consumers are deceived by  
 11 meat and poultry labels and issued its report in December 2020 titled *The Dirt on*  
*Humanewashing: A Farm Forward Report on Consumer Deception in Animal Welfare*  
 12 *Certification*.<sup>9</sup> Relevant to Sanderson’s advertising and labeling, the report lists “natural” as a  
 13 common deceptive label claim used to humanewash poultry products, and also addresses  
 14 neglected animal welfare issues, including “unhealthy genetics and pandemic risk” in the chicken  
 15 industry, report at 24.

16         13. Plaintiffs suffered injury in fact, and a loss of money or property as a result of  
 17 Defendant’s conduct in advertising, marketing, and selling the Products falsely claimed to be  
 18 “100% Natural,” in addition to the misrepresentations described below. Plaintiffs suffered injury  
 19 in fact, and a loss of money or property, as a result Sanderson’s animal raising practices that harm  
 20 and deceive the public. Sanderson’s unfair, unlawful, and fraudulent actions caused Plaintiffs to  
 21 expend resources that they could have used on other aspects of their organizational missions, and  
 22 these actions have impaired Plaintiffs’ ability to carry out their missions of fighting for animals,  
 23

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24         8 Animal Welfare Institute, Label Confusion 2.0,  
 25 [https://awionline.org/sites/default/files/publication/digital\\_download/19%20Label%20Confusion%20Report%20FINAL%20WEB%20II.pdf](https://awionline.org/sites/default/files/publication/digital_download/19%20Label%20Confusion%20Report%20FINAL%20WEB%20II.pdf), last visited May 25, 2021.

26         9 Farm Forward, The Dirt on Humanewashing,  
 27 <https://res.cloudinary.com/hyjvcxzjt/image/upload/v1609362305/resource/undefined-the-dirt-on-humanewashing-farm-forward-1609362294.pdf>, last visited May 25, 2021. Humanewashing is  
 28 defined as “efforts to market animal products by promoting the illusion of animal well-being while concealing the extent of animals’ illness and suffering.”

1 and promoting a sustainable, safe, and environmentally friendly food system. Sanderson has failed  
 2 to remedy these harms and has earned, and continues to earn, substantial profit from selling the  
 3 Products.

4       14.     Defendant's conduct violated and continues to violate consumer protection statutes.  
 5 Accordingly, Plaintiffs bring this action against Defendant on behalf of themselves and the general  
 6 public. Plaintiff Friends of the Earth also brings this case on behalf of its members.

7       15.     Plaintiffs seek injunctive relief requiring Sanderson to make corrective and  
 8 clarifying statements for past and ongoing misrepresentations, to remove the misleading  
 9 misrepresentations going forward, or in the alternative, to change its practices to conform with its  
 10 marketing.

#### **JURISDICTION AND VENUE**

11       16.     This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
 12 § 1332(d) because Plaintiffs are citizens of a state different from Defendant. This Court has  
 13 supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1337.

14       17.     This Court has personal jurisdiction over Defendant because Defendant has  
 15 sufficient minimum contacts with California, or has otherwise purposely availed itself of the  
 16 markets in California through the promotion, advertising, marketing, and sale of the Products in  
 17 California to render the exercise of jurisdiction by this Court permissible under traditional notions  
 18 of fair play and substantial justice.

19       18.     Venue is proper under 28 U.S.C. § 1331(a) because (1) Defendant does substantial  
 20 business in this District; and (2) a substantial part of the events or omissions giving rise to these  
 21 claims occurred in this District, and Defendant engaged in the extensive promotion, advertising,  
 22 marketing, distribution, and sales of the Products at issue in this District.

23       19.     Venue is also proper in this Court under 28 U.S.C. § 1331(e) because Plaintiff In  
 24 Defense of Animals resides in the Northern District of California and Plaintiff Friends of the Earth  
 25 maintains a presence in the Northern District of California.

26       20.     Intradistrict assignment to San Francisco per Local Rule 3-5(b) and 3-2(c) is  
 27 appropriate because Plaintiffs are located in or near San Francisco.

1  
2                   **PARTIES**  
3

4                   **Plaintiffs**  
5

6                   ***In Defense of Animals***  
7

8                  21. Plaintiff In Defense of Animals is an international not-for-profit animal protection  
9 organization founded in 1983. IDA's principal place of business is located in San Rafael,  
10 California, where it is incorporated. Its mission is to fight for animals, people and the  
11 environment. Consistent with this mission, IDA provides the public with accurate information  
12 about the ways in which animal agriculture impacts animal welfare.  
13

14                  22. IDA has more than 250,000 supporters across the globe, with over 450,000  
15 followers on social media.  
16

17                  23. As a result of Sanderson's advertising, IDA lost money by diverting staff time from  
18 its core mission of fighting for animals to addressing Sanderson's false and misleading advertising  
19 and the consumer confusion that Sanderson caused. Sanderson's actions caused IDA to deviate  
20 from its core mission and expend additional resources, and but for Sanderson's actions, IDA  
21 would have used those resources to accomplish other aspects of its organizational mission.  
22

23                  24. On December 1, 2016, IDA became aware of Sanderson's deceptive messaging to  
24 consumers. It was the first time IDA had heard about Sanderson's misleading advertising.  
25

26                  25. On December 2, 2016, as a result of Sanderson's false and misleading advertising  
27 and unfair business practices, IDA started a new campaign to counteract the effects of Sanderson's  
28 conduct on IDA members, consumers, and the general public. IDA reasonably believed that  
consumers, including IDA's members, relied on Sanderson's misrepresentations.

29                  26. As part of this new campaign, on December 6, 2016, IDA approached the Federal  
30 Trade Commission (FTC) in writing with its concerns about Sanderson's advertising.  
31

32                  27. On December 8, 2016, IDA filed a formal complaint with the Better Business  
33 Bureau National Advertising Division (NAD). The complaint addressed Sanderson's advertising  
34 on antibiotics, attached examples from Sanderson's website, social media, and YouTube, and  
35 stated, "We believe the claims in these ads to be extremely misleading." IDA corresponded with  
36

1 the NAD January through April 2017.

2       28. On December 21, 2016, IDA Tweeted, “Sanderson Farms is confusing the public  
 3 with misdirected ‘facts’ to defend its use of #antibiotics.”<sup>10</sup> That same day, IDA published a  
 4 similar statement to Facebook, specifically naming Sanderson, and stating that IDA was seeking  
 5 “to get these ads off air.”<sup>11</sup> More than 300 people engaged with the post and it has been shared  
 6 more than 70 times. Both social media posts link to an article published by IDA in the Huffington  
 7 Post.

8       29. On December 23, 2016, IDA published an action alert titled “Report Sanderson  
 9 Farms Deceptive Ads!” IDA also Tweeted on December 26, 2016, “Report Sanderson Farms  
 10 Deceptive Ads!”<sup>12</sup> This single action alert involved at least four staff members and over 10 hours  
 11 of staff time.

12       30. On February 23, 2017, IDA issued a media release<sup>13</sup> stating that Sanderson  
 13 “actively misleads customers” and referenced the millions of dollars spent on the advertising  
 14 campaign that “loudly promoted its practice of pumping chickens with antibiotics as harmless, and  
 15 smeared Chicken raised without antibiotics as a ‘trick to get you to pay more money.’” IDA  
 16 invested staff time in phoning and emailing individual news outlets to promote the press release.

17       31. On February 24, 2017, IDA published an action alerts to its members regarding  
 18 Sanderson titled, “What is Sanderson Farms Trying to Hide From Us?” and it stated in part,  
 19 Sanderson “promotes its use of antibiotics as harmless, yet it won’t agree to a federal government  
 20 study to measure the health risks.” IDA Tweeted on February 27, 2017, “Sanderson Farms  
 21 promotes antibiotic use as harmless, yet won’t agree to a government study.”<sup>14</sup> On February 27,

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22  
 23       <sup>10</sup> The Tweet is posted online at <https://twitter.com/IDAUSA/status/811809315925262336>. The  
 24 Tweet links to a Huffington Post article that was updated in April 2017, after the date of the  
 25 Tweet.

26       <sup>11</sup> The Facebook post is online at  
<https://www.facebook.com/indefenseofanimals/posts/10154816354922346>.

27       <sup>12</sup> The Tweet is posted online at <https://twitter.com/IDAUSA/status/813519996433350656>.

28       <sup>13</sup> The media release is posted online at <https://www.idausa.org/news/major-chicken-supplier-grilled-on-safety-claims/>.

<sup>14</sup> This Tweet is posted online at <https://twitter.com/IDAUSA/status/836260037593075712>.

1 2017, IDA asked its Facebook followers to take action, specifically, “Tell Sanderson Farms that if  
 2 it wants to promote the use of antibiotics as harmless and safe, that it should be open to scientific  
 3 scrutiny.”<sup>15</sup> More than 400 people engaged with the post and more than 70 people shared it.

4 32. On April 22, 2017, IDA’s article in the Huffington Post, originally posted on  
 5 December 21, 2016, stated that Sanderson was confusing the public with its Bob and Dale  
 6 commercials on antibiotics. Specifically, the article stated, “Instead of cleaning up its dirty  
 7 operation, Sanderson Farms is confusing and blurring the issue in hopes that consumers won’t  
 8 worry about the industry’s prolific antibiotic use. Guess what? That makes Sanderson’s warning  
 9 about marketing gimmicks little more than a marketing gimmick itself.”

10 33. During the NAD process, Sanderson informed the NAD that IDA used Facebook,  
 11 IDA’s website, and other social media outlets to notify the public that Sanderson’s advertising was  
 12 deceptive and designed to confuse the public. Sanderson also informed the NAD that IDA had  
 13 issued an action alert and asked the public to sign a petition to get Sanderson’s ads off the air.  
 14 Sanderson told the NAD that IDA’s president had written an article that was published in the  
 15 Huffington Post criticizing Sanderson’s advertising. At least some of IDA’s communications  
 16 referenced the NAD process, and Sanderson requested that the NAD administratively close the  
 17 complaint because of IDA’s communications to the public. In April 2017, the NAD  
 18 administratively closed the complaint.

19 34. As part of the campaign to counteract the effects of Sanderson’s  
 20 misrepresentations, IDA took at least a dozen separate actions, initiated correspondence with the  
 21 FTC and the NAD, and communicated with its members and the public about Sanderson’s  
 22 unlawful and unfair practices.

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27 <sup>15</sup> The Facebook post is available at  
 28 <https://www.facebook.com/indefenseofanimals/photos/a.10150796907537346/10155026421652346/?type=3&theater>.

1       35. In July 2017, IDA alerted the public via a blog post,<sup>16</sup> Twitter,<sup>17</sup> and Facebook<sup>18</sup> to  
 2 the fact that Sanderson had been sued for false advertising by Friends of the Earth, Center for  
 3 Food Safety, and the Organic Consumers Association, a lawsuit to which IDA was not a party.

4       36. From July 2017 to 2019, IDA followed the *Friends of the Earth v. Sanderson*  
 5 *Farms* lawsuit to determine if Sanderson would be ordered to cease its false and misleading  
 6 statements to the public.

7       37. In 2019, after the Northern District of California dismissed the *Friends of the Earth*  
 8 *v. Sanderson Farms* lawsuit, IDA continued its work to educate the public regarding Sanderson's  
 9 harmful farming practices and Sanderson's misleading communications to the public about those  
 10 practices because of the effect Sanderson's practices and communications have on IDA's mission.  
 11 On November 22, 2019, IDA issued an action alert<sup>19</sup> to over 250,000 members and activists on  
 12 IDA's email list to make its supporters aware of Sanderson's deceitful communications. The  
 13 action alert stated, in part,

- 14       ● “Battle Deceptive Advertising Claims by Mega-Meat Corporations.”
- 15       ● “Sanderson Farms claims that its chicken meat is “100% natural.” However,  
             Sanderson raises chickens inside of cramped industrial sheds and administers a  
             slew of antibiotics and other pharmaceuticals to them prior to their terrifying  
             slaughter. This is far from natural in any sense of the term. Please join us in holding  
             Sanderson Farms accountable for this deceptive advertising!”

20       38. In that action alert, IDA urged its members to sign a petition regarding Sanderson.  
 21 The petition web page stated, in part, “If Sanderson gets away with spreading this misleading

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 24       <sup>16</sup> The blog post is available at <https://www.idausa.org/campaign/farmed-animal/latest-news/sanderson-farms-sued-for-false-advertising/>.

25       <sup>17</sup> The Tweet is available at <https://twitter.com/IDAUSA/status/889606370596716544>.

26       <sup>18</sup> The Facebook post is available at  
<https://www.facebook.com/indefenseofanimals/posts/10155515402157346>.

27       <sup>19</sup> The action alert is posted online at <https://www.idausa.org/campaign/farmed-animal/latest-news/battle-deceptive-advertising-claims-by-mega-meat-corporations/>.

1 information, it will signal to other Big Ag giants that they can do the same.” IDA collected 4,047  
 2 petition signatures. The petition letter stated, in part, “I demand Sanderson Farms immediately  
 3 cease all practices that are inconsistent with its “100% Natural” marketing. These practices  
 4 include, but are not limited to, using antibiotics routinely, selling chicken meat with antibiotic-  
 5 resistant bacteria, and confining chickens exclusively indoors in crowded conditions.”

6       39. IDA also called on its supporters to “Battle Deceptive Advertising Claims by Mega  
 7 #Meat Corporations,” and again specifically identified the company by Tweeting on November  
 8 24, 2019, “#SandersonFarms claims that its #chicken meat is ‘100% natural.’ However, it raises  
 9 #chickens inside of cramped industrial sheds with antibiotics to them prior to their terrifying  
 10 slaughter.”<sup>20</sup> That same day, IDA also engaged its Facebook followers.<sup>21</sup> Again on November 28,  
 11 2019, IDA told its Twitter followers, “Today, the majority of animal farms rely on antibiotics . . .  
 12 #SandersonFarms is no exception.”<sup>22</sup> Also on November 28, 2019, IDA also asked its Facebook  
 13 followers to send a letter to Sanderson,<sup>23</sup> and then on November 30, 2019, again asked its  
 14 followers to help “Battle Deceptive Advertising Claims by Mega-Meat Corporations.”<sup>24</sup>

15       40. On April 10, 2020, IDA, working with FoE and Center for Food Safety, issued a  
 16 letter to Sanderson specifically raising its concerns with Sanderson’s advertising not meeting  
 17 consumer expectations in numerous ways and therefore being misleading. The letter stated, in part,  
 18 “We are hopeful that Sanderson will come to the table ready to discuss a global resolution of the  
 19 public health, food safety, animal welfare, and consumer protection issues that have caused our  
 20 organizations and our members and supporters such great concern.”

21       41. Sanderson responded on April 29, 2020. Instead of addressing any of the public  
 22

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23       <sup>20</sup> This Tweet is available online at <https://twitter.com/IDAUSA/status/1198663154785497088>.

24       <sup>21</sup> The Facebook post is available online at  
<https://www.facebook.com/indefenseofanimals/posts/10157716708882346>.

25       <sup>22</sup> This Tweet is available online at <https://twitter.com/IDAUSA/status/1200142451815723008>.

26       <sup>23</sup> The Facebook post is available at  
<https://www.facebook.com/indefenseofanimals/posts/10157726790392346>.

27       <sup>24</sup> The Facebook post is available at  
<https://www.facebook.com/indefenseofanimals/posts/10157731947692346> and the Tweet is  
 28 available at <https://twitter.com/IDAUSA/status/1200821921803321346>.

1 health, food safety, animal welfare, and consumer protection issues, the letter stated, “Sanderson  
 2 reserves its rights to pursue all available remedies should you and your organizations continue to  
 3 pursue vexatious litigation based on invented assertions of injury, and Sanderson will aggressively  
 4 and vigorously defend itself in any such litigation.”

5       42. After receiving Sanderson’s response, IDA continued to invest staff time in  
 6 determining how best to communicate with Sanderson, despite its unwillingness to communicate,  
 7 and how to pressure Sanderson to make its marketing truthful. The work culminated in an  
 8 additional letter to Sanderson.

9       43. On July 9, 2020, IDA, in cooperation with FoE and Center for Food Safety, sent  
 10 another letter to Sanderson to renew its concerns about Sanderson’s deceptive marketing,  
 11 Sanderson’s farming practices, and the risk to public health from those farming practices in light  
 12 of the coronavirus global pandemic. For example, the letter addressed antibiotic resistance on  
 13 poultry products and that antibiotic resistant bacteria are anticipated to kill COVID-19 patients as  
 14 they succumb to secondary bacterial pneumonia. The letter also invited Sanderson once again to  
 15 come to the table to discuss a resolution.

16       44. As of this filing, Sanderson has not acknowledged receipt or responded.

17       45. From 2019 to 2020, IDA made multiple efforts to address Sanderson’s unfair,  
 18 unlawful, and fraudulent practices without Court intervention.

19       46. In total, IDA diverted at least 200 hours of staff time and related financial resources  
 20 to investigate Sanderson’s advertising, initiate a new campaign, draft member and public outreach,  
 21 answer questions from staff and members, conduct internal and funder briefings, and alert the  
 22 appropriate federal agencies of Sanderson’s unfair, unlawful, and fraudulent practices. This work  
 23 has involved the staff time of IDA’s Farmed Animals Campaign Director, IDA’s Campaigns team,  
 24 IDA’s communications team, and IDA’s IT team.

25       ***Friends of the Earth***

26       47. Plaintiff Friends of the Earth is a national non-profit environmental advocacy  
 27 organization founded in 1969. FoE has offices in Berkeley, California, and Washington, D.C.,  
 28 where it is incorporated. Its mission is to defend the environment and champion a healthy and just

1 world. To this end, FoE promotes policies and actions that ensure the food we eat and the products  
 2 we use are sustainable and safe for our health and the environment.

3       48.     FoE has more than 140,000 members in all fifty states, of whom more than 23,000  
 4 are in California. Additionally, FOE has nearly 2.9 million activist supporters on its email list  
 5 throughout the United States, with more than 153,000 in California.

6       49.     FoE's "Good Food Healthy Planet" program is focused on reducing the harmful  
 7 environmental, animal welfare, social and public health impacts of industrial animal foods. The  
 8 program helps grow the consumer market and policy support for healthier, grass-fed and organic  
 9 meat and dairy, as well as locally-produced and plant-based foods. FoE's program educates the  
 10 public about the impact of meat consumption and production, especially related to the issue of  
 11 antibiotics and other harmful chemicals in animal products. FoE is a co-author of "Chain  
 12 Reaction," an annual report and scorecard that grades America's top restaurant chains on their  
 13 policies and practices regarding antibiotic use and transparency in their meat and poultry supply  
 14 chains. The report also covers the use of hormones and availability of organic and grass-fed  
 15 options. FoE has campaigned over the past several years to eliminate the routine use of antibiotics  
 16 in animal agriculture, with a focus on changing the purchasing policies of large restaurant chains  
 17 that buy large quantities of industrial meat.

18       50.     FoE, which currently has more than ten staff based in California, co-authored a  
 19 report in 2015 titled "Spinning Food: How Food Industry Front Groups and Covert  
 20 Communications Are Shaping the Story of Food,"<sup>25</sup> addressing the issues related to chemical-  
 21 intensive industrial agriculture. Berkeley-based FoE staff also educated the public through blog  
 22 posts in 2015 titled, "Antibiotic Resistance—with a side order of fries?"<sup>26</sup> FoE's Berkeley-based  
 23 staff authored "Redefining Good Food at the Nation's Largest Casual Restaurant Company,"<sup>27</sup> an

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24  
 25       <sup>25</sup> The report is available at <https://foe.org/news/2015-06-big-food-and-chemical-corporations-spend-millions-to-attack-organic/>, last visited July 2020.  
 26       <sup>26</sup> Blog post available at <https://foe.org/2015-09-antibiotic-resistance-with-a-side-order-of-fries/>, last visited July 2020.  
 27       <sup>27</sup> Article available at <https://foodrevolution.org/blog/redefining-good-food-darden-restaurants/>, last visited July 2020.

1 article produced as part of the Good Food Now campaign that was partially focused on the need to  
 2 change Darden Restaurant's sourcing practices around industrial meat production and the use of  
 3 antibiotics. Sanderson sells its chicken to Darden Restaurants.

4       51. In August 2015, FoE staff, particularly the Deputy Director of Food and  
 5 Agriculture, became aware of Sanderson's business practices by reading a May 2015 Wall Street  
 6 Journal article titled, "Sanderson Farms CEO Resists Poultry-Industry Move to Curb Antibiotics:  
 7 Chicken processor CEO Joe Sanderson calls public-health concerns over antibiotic-resistant  
 8 bacteria overblown." Given Sanderson's recalcitrance in addressing antibiotic use concerns,  
 9 Friends of the Earth made the strategic decision to address the negative effects of Sanderson's  
 10 unfair business practices and deceptive advertising by pressuring Sanderson's institutional  
 11 customers (e.g. Olive Garden, owned by Darden Restaurants, Inc. (hereinafter, "Darden")), who  
 12 are household names, and also publicly linking those institutional buyers to Sanderson. Friends of  
 13 the Earth campaigned intently between 2015 and 2018 to eliminate the routine use of antibiotics in  
 14 animal agriculture, with a focus on changing the purchasing policies of large restaurant chains that  
 15 buy significant quantities of industrial meat, including from Sanderson. Throughout this  
 16 campaign, Olive Garden, owned by Darden and supplied by Sanderson, was Friends of the Earth's  
 17 highest priority campaign target.

18       52. On August 1, 2016, Sanderson publicly announced its refusal to eliminate the  
 19 routine use of antibiotics for its chickens. At the same time, Sanderson launched its "Bob and  
 20 Dale" advertising campaign, telling consumers that they do not need to worry about antibiotics in  
 21 their chicken products. Specifically, Sanderson claimed: "there's only chicken in our chicken,"  
 22 and there are "no antibiotics to worry about here," among other things.

23       53. Friends of the Earth immediately took steps to address Sanderson's newest  
 24 deceptive business practices, diverting resources to counteract Sanderson's misinformation within  
 25 days of the August 1, 2016 public statements. FoE's alleged these injuries in *Friends of the Earth*  
 26 v. *Sanderson Farms, Inc.*, C. 17-03592 (N.D. Cal. filed June 22, 2017), a lawsuit against  
 27 Sanderson under California's Unfair Competition Law and False Advertising Law. After two  
 28 years of litigation, the district court determined on July 31, 2019, that FoE and Center for Food

1 Safety did not have organizational standing. *Friends of the Earth v. Sanderson Farms, Inc.*, C. 17-  
 2 03592, 2019 U.S. Dist. LEXIS 127964 (N.D. Cal. July 31, 2019).

3 54. Friends of the Earth and Center for Food Safety appealed the district court decision.

4 55. The Ninth Circuit affirmed. The Ninth Circuit could find no error in the district  
 5 court's conclusion that the activities Friends of the Earth and Center for Food Safety maintained  
 6 were "diversions of resources were actually continuations of non-Sanderson-specific initiatives  
 7 that [Friends of the Earth and Center for Food Safety] were undertaking in furtherance of their  
 8 missions to address antibiotic use generally."

9 56. Sanderson's false and misleading advertising and marketing continued during and  
 10 after the *Friends of the Earth v. Sanderson Farms, Inc.* litigation.

11 57. After the district court in *Friends of the Earth v. Sanderson Farms, Inc.* dismissed  
 12 FoE's claims without prejudice, and FoE could not resolve the dispute through the judicial  
 13 process, FoE was required to divert its limited and essential resources away from its other work,  
 14 including away from its Oceans campaign, to expose and counteract Sanderson's ongoing  
 15 misleading public communications and unfair and unlawful business practices. FoE diverted  
 16 resources by engaging its supporters, members, and the public regarding Sanderson's harmful  
 17 farming practices and Sanderson's misleading communications to the public about those practices  
 18 and by communicating with Sanderson directly on behalf of these members.

19 58. On November 26, 2019, FoE issued an action alert to 452,959 members and  
 20 activists on FoE's email list to make its supporters aware of Sanderson's deceitful  
 21 communications. FoE reasonably believed that consumers, like FoE's members, relied on  
 22 Sanderson's misrepresentations. The action alert stated, in part:

- 23     • "Factory farmed chicken isn't '100% natural': Tell Sanderson to stop lying to  
       24       customers."
- 25     • "The time is now to demand that Sanderson either produce chicken that meets  
       26       consumer expectations for '100% natural' or stop lying to consumers. There is  
       27       power in numbers – can we count on your voice?"

28 59. In that action alert, FoE urged its members to sign a petition regarding Sanderson.

1 The petition web page stated, in part, “If Sanderson gets away with spreading this misleading  
 2 information, it will signal to other Big Ag giants that they can do the same.” FoE collected 7,421  
 3 petition signatures. The petition letter stated, in part, “I demand Sanderson Farms immediately  
 4 cease all practices that are inconsistent with its “100% Natural” marketing. These practices  
 5 include, but are not limited to, using antibiotics routinely, selling chicken meat with antibiotic-  
 6 resistant bacteria, and confining chickens exclusively indoors in crowded conditions.”

7       60.     FoE surveyed its members in November 2019 regarding their chicken purchases  
 8 and the factors that their members consider when choosing which chicken to purchase, and then  
 9 evaluated more than 100 responses from members.

10      61.     On April 10, 2020, FoE, working with IDA and Center for Food Safety, issued a  
 11 letter to Sanderson specifically raising its concerns with Sanderson’s advertising not meeting its  
 12 supporters, members, and the public’s expectations in numerous ways and therefore being  
 13 misleading. The letter stated, in part, “We are hopeful that Sanderson will come to the table ready  
 14 to discuss a global resolution of the public health, food safety, animal welfare, and consumer  
 15 protection issues that have caused our organizations and our members and supporters such great  
 16 concern.”

17      62.     Sanderson responded on April 29, 2020. Instead of addressing any of the public  
 18 health, food safety, animal welfare, and consumer protection issues, the letter stated, “Sanderson  
 19 reserves its rights to pursue all available remedies should you and your organizations continue to  
 20 pursue vexatious litigation based on invented assertions of injury, and Sanderson will aggressively  
 21 and vigorously defend itself in any such litigation.”

22      63.     After receiving Sanderson’s response, FoE continued to divert staff time away from  
 23 its other work, including away from its Oceans program. FoE strategized internally and with IDA  
 24 and others regarding how best to communicate with Sanderson, despite its unwillingness to  
 25 communicate, and how to pressure Sanderson to make its marketing truthful. The work culminated  
 26 in an additional letter to Sanderson.

27      64.     On July 9, 2020, FoE, in cooperation with IDA, sent another letter to Sanderson to  
 28 renew its concerns about Sanderson’s deceptive marketing, Sanderson’s farming practices, and the

1 risk to public health from those farming practices in light of the global pandemic. For example, the  
 2 letter addressed antibiotic resistance on poultry products and that antibiotic resistant bacteria are  
 3 anticipated to kill COVID-19 patients as they succumb to secondary bacterial pneumonia. The  
 4 letter also invited Sanderson once again to come to the table to discuss a resolution.

5 65. As of this filing, Sanderson has not acknowledged receipt or responded.

6 66. FoE's work regarding Sanderson from 2019 to present has involved the staff time  
 7 of FoE's Deputy Director of Food and Agriculture, FoE's communications team, FoE's  
 8 development team, FoE's IT team, and members of FoE's Oceans team.

9 67. From 2019 to 2020, FoE diverted at least 40 hours of staff time and related  
 10 financial resources away from other organizational priorities and divisions, such as the Oceans  
 11 program, to investigate Sanderson's advertising and combat the effects of Sanderson's continuing  
 12 unfair and unlawful business practices.

13 68. FoE's 2019 survey revealed that Sanderson's practices and advertising were indeed  
 14 injuring FoE members, such as Richard Fogel.

15 69. Richard Fogel is a FoE member who resides in Redwood City, California.

16 70. Fogel is an active FoE member. Between 2019 and 2021, Fogel has participated in  
 17 at least twenty FoE actions.

18 71. Fogel purchased Sanderson Farms Chicken Products at a Foods Co. in California  
 19 for many years. He was exposed to both the newspaper advertisements and the product's label  
 20 promising "100% Natural" chicken.

21 72. Fogel chose Sanderson's Products because Sanderson touted its Products as more  
 22 natural than others and he understood the Products to be antibiotic free. Fogel believed that  
 23 Sanderson did not use antibiotics to raise its chickens and therefore it was not possible for any  
 24 antibiotic or pharmaceutical residue to remain on the product. Fogel did not know that Sanderson  
 25 employs farming practices that contribute to antibiotic resistant bacteria. If he had known any of  
 26 that, he would not have bought the products. He additionally understood the Sanderson Products  
 27 marketed as "100% Natural" to be free from artificial ingredients and that the chickens were raised  
 28 free range or range free and eating off the land. Fogel understood from Sanderson's

1 representations that the chickens were raised humanely.

2       73. Fogel discovered Sanderson's practices did not align with its advertising and  
3 marketing in 2020 and informed FoE.

4       74. Fogel is just one example of the FoE members reached by FoE's 2019-2020  
5 member outreach and organizational actions. FoE suffered economic injury by diverting its scarce  
6 organizational resources on behalf of members like Fogel in an effort to counteract Sanderson's  
7 unfair, unlawful, and deceptive practices. But for Sanderson's continuing false advertising and  
8 unfair competition, FoE would have spent these scarce resources on its Oceans program or on  
9 other aspects of its organizational mission.

10      **Defendant**

11       75. Defendant Sanderson Farms, Inc. is a corporation organized and existing under the  
12 laws of the State of Mississippi. Its principal place of business and headquarters are maintained at  
13 127 Flynt Road, Laurel, Mississippi. Sanderson is a publicly traded company with annual revenue  
14 routinely exceeding \$3 billion. In Fiscal Year 2019, Sanderson processed 4.6 billion pounds of  
15 chickens with sales of more than \$3.4 billion.<sup>28</sup>

16       76. Sanderson sells its chicken through supermarket chains throughout the country and  
17 through other outlets.

18       77. Defendant Sanderson disseminates the false representation that the Products are  
19 "100% Natural" in a widespread national advertising campaign, including on its website, in  
20 television, radio and internet commercials, in print advertising, and on trucks and billboards.

21       78. In addition, Sanderson encourages resellers and supermarket chains to use images  
22 of the Products in their print and internet advertisements in order to "promote the sale of  
23 Sanderson Farms 100% natural chicken."<sup>29</sup> The pictures below are examples of the type of  
24 advertising used in flyers in supermarkets:

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25 \_\_\_\_\_  
26  
27 <sup>28</sup> Sanderson Farms, Investor Relations website, available at <http://ir.sandersonfarms.com/>, last  
28 visited July 2020.

28 <sup>29</sup> See <https://sandersonfarms.com/corporate/media-library/product-imagery/>, last visited July  
28 2020.



**PRICES VALID JANUARY 7 THRU JANUARY 13, 2019**

**IGA**

**SLICED FREE!**  
Hormel Always Tender  
**Whole Boneless Center Cut Pork Loin**  
**179 LB.**  
**SAVE \$1.20 LB.**

**100% NATURAL Sanderson Farms<sup>®</sup>**  
**BONELESS SKINLESS FRYER BREAST**  
**1.99 LB.**  
**SAVE \$1.00 LB.**  
**LIMIT 2 PER CUSTOMER**

**Satsumas Mandarins or Florida Honeybell Oranges**  
**4.88 3 LB. BAG**

**BOX TOPS<sup>®</sup> FOR EDUCATION**  
**Totino's Party Pizza Combination**  
**10/\$10**

**BUY, SCAN, EARN.**  
Use the App or go to [www.boxtops4kids.com](http://www.boxtops4kids.com) to print out a mail-in form and find more details

**6.9-10.9 Oz. Select Varieties**  
**Totino's Pizza or Pizza Rolls**  
**10/\$10**

**BOX TOPS<sup>®</sup> FOR EDUCATION**  
**Hamburger Helper**  
**10/\$10**

**BUY, SCAN, EARN.**  
Use the App or go to [www.boxtops4kids.com](http://www.boxtops4kids.com) to print out a mail-in form and find more details

**4.7-8.4 Oz. Select Varieties Hamburger, Chicken or Tuna Helper**  
**10/\$10**

**2.25-3.75 Oz. Select Varieties**  
**Nabisco Go Cups**  
**79¢**

**6 Pk./.5 Liter Bottles Select Varieties Coke Products**  
**4/\$11**  
**WHEN YOU BUY 4 OR 3.99 EACH**

**50 Oz. Tide Liquid Detergent, 20 Ct. Tide Pods or 160 Ct. Bounce Fabric Softener**  
**4.99 WHEN YOU BUY ANY 5 Participating Items**

**12 Roll Charmin Essentials Bath Tissue or 6 Roll Bounty Paper Towels**  
**3.99 WHEN YOU BUY ANY 5 Participating Items**

**2.6-3.8 Oz. Select Varieties Old Spice or Secret Premium Deodorant**  
**1.49 WHEN YOU BUY ANY 5 Participating Items**

**P&G**

**BUY 5, SAVE \$5**

**MIX & MATCH!**

When you buy 5 participating items. All items must be purchased in a single transaction.

1       79.     Defendant also labels the Products “100% Natural.”

2       80.     Plaintiffs challenge the pictures of the Products, which include the labels, when  
3 they are used for purposes of advertising in flyers, circulars, print ads, or other media.

4       81.     Currently, three poultry producers dominate the market, with Sanderson sitting in  
5 third place.

6       82.     Of the top three poultry producers, only Sanderson does not offer at least some  
7 poultry that has never been exposed to antibiotics. Instead, Sanderson uses its “100% Natural”  
8 claims and advertising to compete with the top two producers’ lines of antibiotic-free poultry.

9       83.     Defendant Sanderson ships its Products to purchasers, resellers, and distributors in  
10 California and throughout the country. Sanderson is responsible for the claims and advertisements  
11 for its Products, including on its website where it specifically discusses the “100% Natural”  
12 claims<sup>30</sup> and makes the representations discussed here regarding the Products. According to  
13 Sanderson’s 2019 report to its shareholders, since 2004 Sanderson has been working to gain public  
14 awareness and acceptance of its product as a “natural product” an effort that Sanderson continues  
15 today.<sup>31</sup> Sanderson also stated that it launched campaigns in fiscal 2016 and 2017 “to explain and  
16 support the Company’s position regarding the judicious use of antibiotics to prevent illness and  
17 treat chickens that become ill” and “to dispel many of the myths about poultry production.” These  
18 efforts are designed to mislead consumers into believing that Sanderson chicken, like its more  
19 expensive competitors, was raised without antibiotics.

20       84.     Sanderson knows the value of antibiotic-free representations. Sanderson (and  
21 competitor Perdue Farms) once brought a Lanham Act claim against Tyson Foods, Inc., a leading  
22 competitor and one of the top three poultry producers in the United States, for running ads saying  
23 that Tyson chicken was “raised without antibiotics.” *Sanderson Farms, Inc. v. Tyson Foods Inc.*,  
24 Civ. No. 08-210 (D.Md. filed Jan 25, 2008). Sanderson argued that Tyson was, in fact, using

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25  
26  
27       <sup>30</sup> See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited July 2020.

28       <sup>31</sup> This report is available at <http://ir.sandersonfarms.com/index.php/static-files/dd7be81d-df8a-4e22-b267-89cc6e9dcc89>, last visited May 25, 2021.

1 antibiotics to raise its chicken and should be enjoined from running the ads. The court granted the  
2 injunction.

3        85. Sanderson is responsible for the claims and advertisements for its Products,  
4 including on its website where it specifically discusses the “100% Natural” claims<sup>32</sup> and makes  
5 the representations discussed regarding the Products.

## **FACTUAL BACKGROUND**

## Sanderson Chicken Products

8           86.     Sanderson's Chicken Products, all of which are marketed as "100% Natural"  
9 include the following:<sup>33</sup>

- Clipped Chicken Tenderloins
- Boneless Skinless Chicken Thigh Fillets
- Boneless Skinless Breast Strips
- Thinly Sliced Boneless Skinless Breast Fillets
- Boneless Skinless Breast Fillets
- Best of Boneless
- Boneless Skinless Breast Chunks
- Family Pack Whole Legs
- Whole Legs
- Family Pack Wingettes
- Wingettes
- Drumsticks & Thighs Combo
- Skinless Drumsticks
- Chicken Hearts
- Value Pack Chicken Gizzards
- Skinless Split Breast

<sup>32</sup> See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 27, 2019.

<sup>33</sup> Discovery may indicate that additional products should be included within the scope of this Complaint, and Plaintiffs reserve the right to add those products.

- 1       • Family Pack Chicken Tenderloins
- 2       • Chicken Tenderloins
- 3       • Family Pack Boneless, Skinless Chicken Breast Fillets with Rib Meat
- 4       • Skinless Thighs
- 5       • Family Pack Thighs
- 6       • Thighs
- 7       • Value Pack Thighs
- 8       • Value Pack Leg Quarters
- 9       • Value Pack Wings
- 10      • Value Pack Drumsticks
- 11      • Value Pack Split Breasts
- 12      • Chicken Necks
- 13      • Wing Drumettes
- 14      • Family Pack Drumsticks
- 15      • Family Pack Thighs
- 16      • Family Pack Leg Quarters
- 17      • Whole Roasting Chicken
- 18      • Pick of the Chicken
- 19      • Family Pack Wings
- 20      • Family Pack Split Breasts
- 21      • Livers Chicken Gizzards
- 22      • Stripped Back Portions
- 23      • Wings
- 24      • Thighs
- 25      • Drumsticks
- 26      • Split Breasts
- 27      • Whole Cut-Up Chicken with Giblets and Neck
- 28      • Whole Frying Chicken (Whole Young Chicken).

87. An example of Sanderson's Chicken Products is reproduced here:<sup>34</sup>



88. The Chicken Products are available for purchase under the Sanderson Farms brand at retail locations throughout California at stores such as Albertsons, Vons, Food 4 Less, Foods Co, and WinCo Foods,<sup>35</sup> and nationally with the Sanderson Farms logo in stores such as Wal-Mart, Kroger and some Kroger-owned chains, Safeway, and Sam's Club.

89. Sanderson markets and advertises its Chicken Products nationally, and seeks to reach consumers through commercials on television, print advertising, radio advertising, email newsletters, billboard advertising, and online marketing such as Facebook, YouTube, Instagram, Pinterest and its own website.

## **Sanderson's Extensive National False and Misleading Advertising, Including Its "100% Natural" Representations**

90. In an extensive national advertising campaign, Sanderson misleads consumers into believing its chickens are not raised with pharmaceuticals or antibiotics; that the chickens are

<sup>34</sup> Plaintiffs challenge (1) the advertising of these products including the label used as advertising, for example, in flyers sent out by grocery stores and markets in keeping with Sanderson's advertising guidelines. Sanderson encourages resellers to use images like the one in ¶ 77 in their print and internet advertisements in order to "promote the sale of Sanderson Farms 100% natural chicken." See <https://sandersonfarms.com/corporate/media-library/product-imagery/>, last visited July 2020. Accordingly, Sanderson is responsible for the content of the flyers and circulars. Plaintiffs also challenge (2) the product labels as false and misleading.

<sup>35</sup> Sanderson Farms, “Find A Store,” <http://www.sandersonfarms.com/store-finder/>, last visited July 2020.

1 raised in a natural environment; that the use of antibiotics in poultry cannot promote the evolution  
 2 of antibiotic-resistant bacteria; and that the Products cannot possibly have any antibiotic or  
 3 pharmaceutical residue when sold.

4       91. In addition to specific false and misleading statements described below, Sanderson  
 5 uses the phrase “100% Natural” in different contexts throughout its advertising to bolster these  
 6 misrepresentations. Sanderson repeatedly makes false “100% Natural” representations in various  
 7 media—television, website, social media, print magazines, radio advertising, billboards, trucks,  
 8 etc.—when in fact its chicken production process and resulting products do not meet reasonable  
 9 consumer expectations for products advertised as “100% Natural.”

10     92. The use of the term “natural,” let alone “100% Natural,” is a powerful statement  
 11 that is important to consumers.

12     93. A 2015 Consumer Reports<sup>36</sup> survey found that 62% of consumers purchase  
 13 “natural” products, and that 87% of those purchasers are willing to pay more for products called  
 14 “natural” that meet their expectations as to what “natural” means.<sup>37</sup> A 2016 survey found the  
 15 number of consumers who purchase “natural” products to be as high as 73%.<sup>38</sup>

16     94. According to surveys by Consumer Reports, the meaning of the term “natural,”

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18     <sup>36</sup> Consumer Reports, founded in 1936, is “an independent, nonprofit member organization that  
 19 works side by side with consumers for truth, transparency, and fairness in the marketplace.” It has  
 20 six million members and tests tens of thousands of products annually to provide consumers with  
 21 product reviews. Consumer Reports, “About Us”, available at  
<https://www.consumerreports.org/cro/about-us/what-we-do/index.html>, last visited July 2020. CR  
 22 has a Survey Research department that conducts more than one hundred surveys per year. Its  
 23 surveys are not commissioned or financed by industry. Available at  
<https://www.consumerreports.org/cro/about-us/what-we-do/research-and-testing/index.html>, last  
 24 visited July 2020. In October 2018, CR published a front page story on its monthly magazine  
 25 titled, “What’s Really in Your Meat?” Available at <https://www.consumerreports.org/food-safety/are-banned-drugs-in-your-meat/>, last visited July 2020. The article title for the online  
 26 version is “Are Banned Drugs in Your Meat ?”.

27     <sup>37</sup> Consumer Reports National Research Center, “Natural Food Labels Survey” (2015), at 2,  
 28 previously available at [http://greenerchoices.org/wp-content/uploads/2016/08/2016\\_CRFoodLabelsSurvey.pdf](http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf), last visited August 30, 2019.

27     <sup>38</sup> Consumer Reports National Research Center, “Food Labels Survey” (2016), at 5, available at  
<https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf>, last visited July 2020).

1 even isolated from Sanderson's many other specific misrepresentations, conveys a message  
 2 entirely at odds with the reality of Sanderson's practices. For example, 88% of consumers expect  
 3 that meat with a "natural" label meant that the meat "came from an animal whose diet was natural  
 4 and free of chemicals, drugs and other artificial ingredients."<sup>39</sup>

5 95. Further, 50% of consumers believe use of the term "natural" means that the animals  
 6 went outdoors,<sup>40</sup> and 83% expect that the "natural" label means the animal was raised in a natural  
 7 environment.<sup>41</sup>

8 96. Friends of the Earth commissioned a consumer survey in 2019 specific to  
 9 Sanderson's advertising. Survey respondents viewed one of Sanderson's video commercials and  
 10 then were asked what they understood about Sanderson. Over half, 51%, of survey respondents  
 11 understood Sanderson to be communicating in the video commercial that it **never** uses antibiotics  
 12 with its chickens, directly contrary to Sanderson's routine use in every flock.

13 97. Other survey respondents viewed Sanderson's website. After viewing Sanderson's  
 14 "100% Natural" representations on the website accompanied by the "with nothing added"  
 15 statement, 61% believed that Sanderson **never** uses antibiotics, directly contrary to Sanderson's  
 16 routine use in every flock.

17 **Allegations Concerning the Misrepresentation That the Chickens Are Not Raised  
 18 With Antibiotics Or Pharmaceuticals**

19 98. Sanderson misleads consumers into believing its chickens are raised without  
 20 antibiotics or pharmaceuticals. Its carefully crafted message makes constant use of the "100%  
 21 Natural" representation in conjunction with advertising that attacks competitors who use the term  
 22 "raised without antibiotics." Sanderson says that "raised without antibiotics" is a meaningless  
 23 statement because, Sanderson says, "all chickens must be cleared of antibiotics when they leave

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24  
 25 <sup>39</sup> Consumer Reports National Research Center, "Food Labeling Poll" (2007), at 15, not available  
 26 online.  
 27 <sup>40</sup> Consumer Reports National Research Center, "Natural Food Labels Survey" (2015), at 4, not  
 28 available online.  
<sup>41</sup> Consumer Reports National Research Center, "Food Labeling Poll" (2007), at 15, not available  
 online.

1 the farm.” The message is that all chickens, including Sanderson’s, are the same because they do  
 2 not have any antibiotics.

3       99. The likely reason Sanderson embarked on this antibiotics ad campaign, in lieu of  
 4 labeling the Chicken Products with antibiotics language, is because the United States Department  
 5 of Agriculture (USDA) would not let Sanderson use the phrase “raised without antibiotics” on its  
 6 packaging like its competitors do, because Sanderson routinely feeds antibiotics to its chickens. In  
 7 order to use the phrase “raised without antibiotics” on the label, the USDA requires that the source  
 8 animals were not given antibiotics in their feed, water, or by injection. Poultry producers must  
 9 apply for and obtain permission to make claims on their labels regarding antibiotics.

10      100. Since Sanderson cannot lawfully label its chickens with antibiotics language like its  
 11 competitors do, Sanderson instead avoids this this prohibition by trying to trick consumers with its  
 12 unregulated ad campaign into believing that its chickens are the same as those of its competitors.

13      101. The phrase “raised without antibiotics” is important to consumers. A 2007  
 14 Consumer Reports survey found that six out of ten Americans would pay more for meat/poultry  
 15 with the ‘raised without antibiotics’ label and 89% of consumers say all meat companies should be  
 16 required to disclose the amount and type of antibiotics used.<sup>42</sup>

17      102. As a result, in an end run around government regulation, Sanderson tries to trick  
 18 consumers into believing that no chicken contains antibiotics and the “raised without antibiotics”  
 19 statement on the packaging of its competitors is meaningless verbiage and that its chickens are the  
 20 same as those bearing the “raised without antibiotics” statement.

21      103. This message is hammered home in several television and web commercials.

22      104. In a “Bob and Dale” television commercial called “The Truth About Chicken:  
 23 Supermarket,” Sanderson states that by federal law all chickens must be cleared of antibiotics  
 24 when they leave the farm and makes the point that all chickens in the supermarket are free of

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25  
 26  
 27      <sup>42</sup> Consumer Reports National Research Center, “Natural and Antibiotics Labels Survey” (2018),  
 28 available at <https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf> (last visited July 2020).

1       antibiotics, including Sanderson's. This commercial has over 90 million impressions on television  
 2 and over six million views on YouTube and Facebook.

3       105. Sanderson misleads consumers by stating: "Some chicken companies try to get you  
 4 to spend more money by using labels like 'raised without antibiotics.' At Sanderson Farms, we  
 5 don't believe in gimmicks like that." The commercial then shows a person piling a variety of  
 6 chicken brands, selected while blindfolded, into a cart and saying, "no antibiotics to worry about  
 7 here."

8       106. This statement is misleading because the message the commercial conveys is that  
 9 no chicken (including Sanderson's) contains antibiotics, and that the phrase "raised without  
 10 antibiotics" is a "gimmick." Sanderson places itself on the same plane as its competitors who do  
 11 not raise chickens with antibiotics. In reality, Sanderson uses antibiotics, while some of its key  
 12 competitors do not.



13       107. The thirty-second commercial ends by showing the above panel for four seconds.  
 14

15       108. In another "Bob and Dale" commercial, "The Truth About Chicken: Mr. Floppy  
 16 Arms" Sanderson makes the same points, calling its competitors' statement "raised without  
 17 antibiotics": "full of hot air and doesn't say much"; "a trick to get you to pay more money" and "a  
 18 marketing gimmick." The thirty-second commercial ends with the same "100% Natural" panel  
 19 and has over 100 million impressions on television.

20       109. In "Marketing Guru," Bob and Dale ridicule a Madison Avenue ad executive who  
 21 "likes to use the phrase 'raised without antibiotics.'" Bob and Dale state that the phrase was  
 22 invented to make chicken sound safer but is meaningless. The thirty-second commercial ends with  
 23 the same "100% Natural" panel and has over 80 million impressions on television.  
 24

1       110. In the commercial “Truth About Chicken: Labels,” Sanderson calls the claim that  
 2 competitors’ chickens are raised without antibiotics a ruse to “trick people and charge higher  
 3 prices” and “marketing speak.” Sanderson then says it feeds its chickens a healthy, balanced diet  
 4 full of vitamins and “animal protein like they naturally eat” and notes that “labels can be  
 5 misleading.” Sanderson does not disclose that it uses either antibiotics or pharmaceuticals in the  
 6 feed.

7       111. The deception regarding pharmaceutical use, including antibiotics, is also made in  
 8 at least one 2016 video<sup>43</sup> titled, “How We Grow Our Chicken.” In the video a Corporate  
 9 Veterinarian describes Sanderson’s hatchery process and states, “This single combined injection  
 10 under the shell is the only time we inject antibiotics, leaving little opportunity for resistance to  
 11 develop and no residues in the grown broilers weeks later when they go to market.” Sanderson  
 12 continues, “At no point are Sanderson Farms broilers ever injected with anything and there are  
 13 never any antibiotic residues in our broilers when they go to market.”

14       112. This representation is misleading for several reasons: First, although Sanderson is  
 15 careful to limit its statement to “injections,” Sanderson operates its own feed mills, and routinely  
 16 adds pharmaceuticals and antibiotics to the chickens’ feed.

17       113. Second, Sanderson contradicts itself regarding whether Sanderson injects broiler  
 18 chickens or not, by stating that it injects antibiotics into the shells of the chickens’ eggs, but not  
 19 the chickens themselves.

20       114. Sanderson gives the impression that the chickens are raised without using synthetic  
 21 feed or injections by playing on the nuances in regulated and unregulated terms such as “no  
 22 antibiotics ever,” “raised without antibiotics,” and Sanderson’s claim of being “cleared” of  
 23 antibiotics.

24       115. One YouTube viewer expressed confusion by commenting, “is the only time we  
 25 use antibiotics’. I thought you guys said all Chickens in the US are supposedly antibiotic free or

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27       28       <sup>43</sup> Available at [https://www.youtube.com/watch?time\\_continue=275&v=Fghbb4lYaiU](https://www.youtube.com/watch?time_continue=275&v=Fghbb4lYaiU) (last visited July 2020).

1 that you guys don't use them?"<sup>44</sup>

2       116. Consumer surveys support the allegation that Sanderson's use of the ubiquitous  
 3 "100% Natural" representation misleads reasonable consumers into believing the chickens are  
 4 raised without antibiotics.

5       117. Consumer Reports has performed several surveys on food marketing, including  
 6 in 2007,<sup>45</sup> 2008,<sup>46</sup> 2015,<sup>47</sup> 2016,<sup>48</sup> and 2018.<sup>49</sup>

7       118. The 2015 survey found that when "natural" is used to describe meat and poultry:  
 8           a. 57% of consumers think that no antibiotics or other drugs were used;  
 9           b. 61% of consumers think that the animals' feed contained no artificial  
 10              ingredients or colors and 59% think that there were no GMOs in the feed;  
 11           c. 88% of consumers expect that meat with a "natural" label meant that the meat  
 12              "came from an animal whose diet was natural and free of chemicals, drugs and  
 13              other artificial ingredients."<sup>50</sup>

14       119. Sanderson's other main competitors have product lines that are brought to market  
 15 wholly without antibiotics and Sanderson's advertising misleads consumers into believing that  
 16 Sanderson follows the same practices.

17       120. Sanderson makes the same misrepresentation on its website. It has represented its

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19       44 *Id.*

20       45 Consumer Reports National Research Center, "Food Labeling Poll" (2007), not available online.

21       46 Consumer Reports National Research Center, "Food-Labeling Poll 2008" (2008), available at  
<http://4bgr3aepis44c9bxt1ulxsyq.wpengine.netdna-cdn.com/wp-content/uploads/2015/02/foodpoll2008.pdf>, last visited July 2020.

22       47 Consumer Reports National Research Center, "Natural Food Labels Survey" (2015), available  
 23 at <https://foodpolitics.com/wp-content/uploads/Consumer-Reports-Natural-Food-Labels-Survey-Report.pdf>, last visited July 2020.

24       48 Consumer Reports National Research Center, "Food Labels Survey" (2016), previously  
 25 available at [http://greenerchoices.org/wp-content/uploads/2016/08/2016\\_CRFoodLabelsSurvey.pdf](http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf), last visited August 30, 2019.

26       49 Consumer Reports National Research Center, "Natural and Antibiotics Labels Survey" (2018),  
 27 available at <https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf>, last visited July 2020.

28       50 Consumer Reports National Research Center, "Food Labeling Poll" (2007), at 15, not available  
 online.

1 chicken as “100% Natural” on the homepage of its website and states that its chicken is “nothing  
 2 but the safest, most wholesome poultry, with nothing added.”<sup>51</sup> A similar statement and  
 3

4 **100%**  
 5 **Natural**

6 We believe that delicious, quality chicken should be able  
 7 to stand on its own. Always. At Sanderson Farms, we  
 8 pride ourselves in delivering nothing but the safest, most  
 9 wholesome poultry, with nothing added. So you know  
 what you're getting every time.

10 **Learn More >**

11 accompanying graphic persists elsewhere on Sanderson’s website.<sup>52</sup>

12 121. The “Learn More” button on the homepage took consumers to a webpage devoted  
 13 to its “100% Natural” representation.<sup>53</sup>

14 122. This page stated “There’s Only Chicken In Our Chicken. Seriously.”<sup>54</sup> and “No  
 15 Additives Or Artificial Ingredients. Not Ever.<sup>55</sup>



20  
**No Additives**  
**Or Artificial**  
**Ingredients.**  
**Not Ever.**

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25 <sup>51</sup> See <https://sandersonfarms.com/>, last visited August 29, 2019.

26 <sup>52</sup> See <https://sandersonfarms.com/our-chickens/natural-protein/>, last visited July 2020.

27 <sup>53</sup> See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 29, 2019.

28 <sup>54</sup> See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 30, 2018.

<sup>55</sup> *Id.*

1       123. Sanderson did not disclose its use of antibiotics or pharmaceuticals in the feed  
 2 given to its chickens on the “Learn More” page and still does not disclose its routine use.

3       124. Elsewhere on its website, Sanderson also makes the following statements to further  
 4 mislead consumers into thinking that Sanderson does not routinely use pharmaceuticals in raising  
 5 the chickens:

- 6           • “That means no additives, no unpronounceable ingredients, nothing extra. Just  
     7           100% natural chicken that’s healthy and a treat for your taste buds.”<sup>56</sup>
- 8           • “100% Natural. We firmly stand behind our commitment to keep things the  
     9           way nature intended.”<sup>57</sup>
- 10          • “The Myth: The myth is, only chicken raised without antibiotics are safe to eat.  
     11           The Truth: The truth is, none of the chicken you buy in the grocery store  
     12           contains antibiotics. By federal law, all chickens must be clear of antibiotics  
     13           before they leave the farm.”<sup>58</sup>

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24       <sup>56</sup> See at <https://sandersonfarms.com/our-chickens/100-natural/>, last visited August 30, 2019. Since  
 25 plaintiffs originally sued Sanderson for false advertising and unfair competition, Sanderson has  
 updated its website and the address above routes to <https://sandersonfarms.com/our-chickens/natural-protein/>, last visited July 2020. This updated website continues to make the identical or similar statements as of this filing.

26  
 27       <sup>57</sup> See at <https://sandersonfarms.com/?s=subscribe>, last visited July 2020.

28       <sup>58</sup> See <https://sandersonfarms.com/chicken-myths/#2nd>, last visited July 2020.

1       125. In a video on its website, Sanderson touts the nutritional value of the chickens'  
2 "corn and soy-based diets"<sup>59</sup> but omits any mention of pharmaceuticals and antibiotics.



13       126. In addition, Sanderson maintains on its website<sup>60</sup> a "Christmas TV Commercial"  
14 linked to YouTube using the same "100% Natural" tagline.

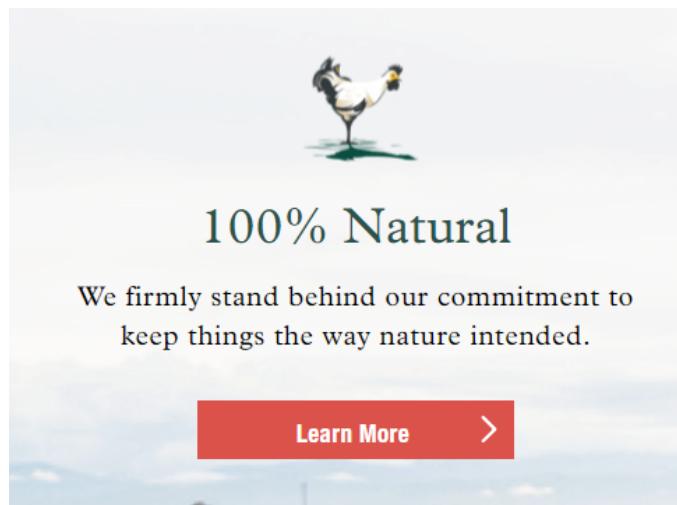


25       Merry Christmas and Happy Holidays from Sanderson Farms!

27       <sup>59</sup> See [https://www.youtube.com/watch?time\\_continue=80&v=Fghbb4lYaiU](https://www.youtube.com/watch?time_continue=80&v=Fghbb4lYaiU), last visited July  
28       2020.

28       <sup>60</sup> See <https://sandersonfarms.com/corporate/media-library/brand-assets/>, last visited July 2020.

1       127. Sanderson also represents that the Products are “100% Natural” on its current  
 2 newsletter subscription webpage and further adds that: “We firmly stand behind our commitment  
 3 to keep things the way nature intended.”<sup>61</sup>



13       128. Sanderson further emphasizes its representation of “100% Natural” message  
 14 by sending a monthly 100% Natural Newsletter to over 600,000 annual readers across 42 different  
 15 states.<sup>62</sup> Sanderson has continued to publish this newsletter in 2020.<sup>63</sup>

16       129. Sanderson advertises the Products as “100% Natural” in print magazines across the  
 17 country.

18       130. Sanderson advertises itself as “100% Natural” via radio.

26       61 See <https://sandersonfarms.com/?s=subscribe>, last visited July 2020.

27       62 See <https://sandersonfarms.com/press-releases/sanderson-farms-awarded-twenty-public-relations-advertising-awards/>, last visited July 2020.

28       63 See <https://sandersonfarms.com/blogs/section/100-natural-newsletter/>, last visited July 2020.

131. Sanderson Farms trucks advertise “100% Natural” on the sides:



132. In another Facebook post Sanderson also refers to its “limited use” instead of informing the public of its routine use of antibiotics:

None of the chicken you buy in the grocery store has antibiotics in it.  
By federal law, all chicken must be clear of antibiotics before they leave the farm.

**Richard Ferrick** Do you use antibiotics?  
Like · Reply · 3y

Most Relevant is selected, so some replies may have been filtered out.

**Sanderson Farms Chicken** Hi Richard, we can assure you that our husbandry practices are put in place to ensure the safety of our chickens, our environment, and our families. Our limited use of antibiotics is something we take very seriously, and there is more information on th... See More

**FOODBUSINESSNEWS.NET**  
In defense of antibiotics in animal production

**Dennis Hammond** So your saying NOBODY ever violates federal law. Very comforting, but doubt its true.

View 4 more comments

133. All of these statements were made within the applicable statute of limitations, and many continue as of this filing.

## **Allegations Concerning the Misrepresentation That the Chickens Are Raised Outdoors In A Natural Environment**

134. Sanderson's representations would mislead a reasonable consumer into believing its chickens were raised in a natural environment and in a humane manner.

135. In addition to the “100% Natural” claims discussed *supra*, Sanderson, addressing animal welfare on its website, represents that “At Sanderson Farms, we believe in raising our chickens humanely to ensure their safety, nutrition, and overall health.”



# Our Birds Come First

At Sanderson Farms, we believe in raising our chickens humanely to ensure their safety, nutrition, and overall health.

136. Sanderson reinforces this claim and the general false impression of high animal welfare standards with recent TV commercials of chickens being given pricey gifts from humans and chickens dining in restaurants, a TV commercial titled “Old MacGimmick,”<sup>64</sup> and in the past, images of chickens playing volleyball and sipping lemonade.

137. On its website, Sanderson states that “The truth is, none of the chicken you buy in a store is raised in a cage. Chickens are raised in spacious, climate-controlled houses where they are free to eat, drink, and walk around all they want.”<sup>65</sup>

<sup>64</sup> See <https://www.ispot.tv/ad/w10S/sanderson-farms-old-macgimmick?autoplay=1>, last visited May 24, 2021.

<sup>65</sup> See <https://sandersonfarms.com/chicken-myths/#4th>, last visited May 24, 2021.

1       138. The houses are also described as “a comfortable, cage-free environment” where  
 2 “our chickens live in a spacious, climate-controlled environment with unlimited access to food and  
 3 water. The only time our chickens are caged is for their safety when they’re being transported  
 4 from the farm to the processing plant.”<sup>66</sup>

5       139. According to a 2016 Consumer Reports survey,<sup>67</sup> a significant portion of  
 6 consumers would be misled by Sanderson’s statements regarding how it treats its birds.  
 7 Specifically, 82% of consumers think that a “humanely raised” representation, such as the one  
 8 Sanderson makes on its website, *supra ¶ 125*, means that the farm was inspected to verify this  
 9 claim, 77% think the animals had adequate living space, 68% think the animals went outdoors,  
 10 and 65% think the animals were raised in houses with clean air.<sup>68</sup>

11       140. In addition, in 2007 Consumer Reports Natural Research Center reported that when  
 12 the word “natural” is used to describe poultry, let alone Sanderson’s claim of “100% Natural,”  
 13 50% of consumers think that the animals went outdoors,<sup>69</sup> and 83% expect the “natural” label  
 14 meant that the animal was raised in a natural environment.<sup>70</sup>

15       141. Sanderson’s statements on how it treats its chickens are false and misleading  
 16 because in reality, Sanderson’s chickens are raised in crowded industrial sheds (that also  
 17 contribute to the growth of antibiotic resistant bacteria), and the chickens are raised in intensive  
 18 confinement, only indoors,<sup>71</sup> where they never get sunlight except when they are transported for  
 19

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20       21       <sup>66</sup> See <https://sandersonfarms.com/our-chickens/animal-welfare/>, last visited July 2020.

22       <sup>67</sup> Food Labels Survey (2016), previously available at [http://greenerchoices.org/wp-content/uploads/2016/08/2016\\_CRFoodLabelsSurvey.pdf](http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf), last visited September 3, 2019.

23       <sup>68</sup> *Id.* at 16.

24       <sup>69</sup> Consumer Reports National Research Center, “Natural Food Labels Survey” (2015), at 4, previously available at <http://4bgr3aepis44c9bxt1ulxsyq.wpengine.netdna-cdn.com/wp-content/uploads/2015/02/foodpoll2008.pdf>, last visited August 30, 2019.

25       <sup>70</sup> Consumer Reports National Research Center, “Food Labeling Poll” (2007), at 15, not available online.

26       <sup>71</sup> The industry standard, including Sanderson, is indoors. “Almost all the chickens eaten in the United States, and increasingly in the rest of the world, have been raised for decades in this manner: always indoors, always under artificial light, always eating only what the farmer supplies.” Maryn McKenna, “Big Chicken,” (2017), available at <https://itunes.apple.com/us/book/big-chicken/id1217089199?mt=11>.

1 slaughter.

2       142. As for the crowding and stocking density inside chicken sheds, an industry guide  
 3 recommended 1.097 to 1.180 square feet per bird. The industry standard for a grow-out house is  
 4 20,000 birds or more, with eight-tenths of a square foot per bird.<sup>72</sup> Sanderson reported that it lost  
 5 2.1 million birds in Hurricane Florence who were housed in 70 grow-out sheds; that is  
 6 approximately 30,000 birds per shed,<sup>73</sup> even more than the 25,000 to 27,000 birds per shed  
 7 identified by Sanderson's veterinary staff. A reasonable consumer would not think that industrial  
 8 sheds with approximately 25,000 to 30,000 birds with approximately one square foot per bird is  
 9 "natural."

10     143. Sanderson also subjects its birds to cruel, inhumane treatment. A 2016 investigation  
 11 at the Kinston, N.C. hatchery farm has revealed the horrific conditions in which Sanderson's  
 12 chicks are left to die.<sup>74</sup> The Animal Welfare Institute, based on the USDA inspection records,  
 13 determined that the Sanderson chicken plant in Collins, Mississippi, was one of the nine worst  
 14 chicken plants of three hundred surveyed for animal cruelty.<sup>75</sup> AWI also found that two Sanderson  
 15 plants have been cited at least 20 times for not complying with humane handling standards<sup>76</sup> (the  
 16 Palestine, Texas facility had 20 humane handling reports in 2015-2016, and the Kinston, North  
 17

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18     <sup>72</sup> National Chicken Council, "Animal Welfare for Broiler Chickens," available at  
 19 <https://www.nationalchickencouncil.org/industry-issues/animal-welfare-for-broiler-chickens/#one>,  
 last visited July 2020.

20     <sup>73</sup> Mother Jones, "These Photos of Submerged North Carolina Livestock Farms Are Devastating,"  
 21 <https://www.motherjones.com/food/2018/09/these-photos-of-submerged-north-carolina-livestock-farms-are-devastating/>, last visited July 2020; *see also* <https://sandersonfarms.com/press-releases/sanderson-farms-inc-provides-update-hurricane-florence-damage/>, last visited July 2020/.

22     <sup>74</sup> PETA, "Chicks Dropped Live Into Mincer at Chicken Supplier of Kroger, Arby's," available at  
 23 <https://investigations.peta.org/?s=arby%27s>  
 and <https://www.peta.org/media/news-releases/exposed-chicks-left-suffer-die-chicken-meat-supplier-kroger-arbys/>, last visited July 2020.

24     <sup>75</sup> *See* Animals 24-7, "Pilgrim's Pride & Case Farms have "worst chicken plants for animal cruelty," say Animal Welfare Institute & Farm Sanctuary," available at  
<https://www.animals24-7.org/2014/11/22/pilgrims-pride-case-farms-have-worst-chicken-plants-for-animal-cruelty-say-animal-welfare-institute-farm-sanctuary/>, last visited July 2020.

25     <sup>76</sup> Animal Welfare Institute, "New Report Exposes Pattern of Animal Mistreatment in Some US Poultry Plants," available at <https://awionline.org/press-releases/new-report-exposes-pattern-animal-mistreatment-some-us-poultry-plants>, last visited July 2020.

1 Carolina facility had 22 reports for 2011-2014).<sup>77</sup> The Palestine violations included, among others,  
 2 excessive use of force, improper sorting of “DOAs and live birds” and birds drowning in the scald  
 3 tank. In 2016, a USDA inspector determined the plant’s slaughtering process was “out of control”  
 4 for the scald tank violations and noted that similar incidents had taken place before.<sup>78</sup>

5 **Allegations Concerning the Misrepresentation That There Is No Evidence the Use of  
 6 Antibiotics in Poultry Contributes to The Evolution of Antibiotic-Resistant Bacteria**

7 144. Based on Sanderson’s advertising, a reasonable consumer would believe  
 8 Sanderson’s “100% Natural” claim means that its chickens were raised in a manner that does not  
 9 contribute to the development of antibiotic-resistant bacteria.

10 145. As described *supra ¶¶* 88-123, Sanderson goes to great lengths to conceal the fact  
 11 that it uses pharmaceuticals and antibiotics in the feed.

12 146. Coupled with the numerous representations that its chickens are “100% Natural,”  
 13 and its repeated statements to the effect that “raised without antibiotics” is a marketing gimmick to  
 14 which no attention need be paid in the comedic Bob and Dale commercials, *supra ¶¶* 94-99,  
 15 Sanderson seeks to convince consumers that their concerns about the evolution of antibiotic-  
 16 resistant bacteria are something to be laughed off.

17 147. However, this is an important issue to consumers. According to the 2016 Consumer  
 18 Reports survey, 65% of consumers are concerned that feeding antibiotics or other drugs to animals  
 19 leads to antibiotic resistant bacteria,<sup>79</sup> and the 2018 survey showed that 77% of consumers were  
 20 concerned that feeding antibiotics to farm animals would make drugs less effective for humans.<sup>80</sup>  
 21 Of those, 43% were either “extremely” or “very” concerned.

22  
 23 <sup>77</sup> Animal Welfare Institute, “The Welfare of Birds At Slaughter In The United States - 2017  
 24 Update”, at 9, available at <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Welfare-of-Birds-at-Slaughter-Update.pdf>, last visited July 2020.

25 <sup>78</sup> *Id.*

26 <sup>79</sup> Consumer Reports National Research Center, “Food Labels Survey” (2016), at 10, previously  
 27 available at [http://greenerchoices.org/wp-content/uploads/2016/08/2016\\_CRFoodLabelsSurvey.pdf](http://greenerchoices.org/wp-content/uploads/2016/08/2016_CRFoodLabelsSurvey.pdf), last visited July 2020.

28 <sup>80</sup> Consumer Reports National Research Center, “Natural and Antibiotics Labels Survey” (2018),  
 29 available at <https://advocacy.consumerreports.org/wp-content/uploads/2018/10/2018-Natural-and-Antibiotics-Labels-Survey-Public-Report-1.pdf>, last visited July 2020.

1       148. Sanderson further downplays the risk of the spread of antibiotic-resistant bacteria  
 2 by telling consumers “no antibiotics to worry about here,” and “the truth is, none of the chicken  
 3 you buy in the grocery store contains antibiotics. By federal law, all chickens must be clear of  
 4 antibiotics before they leave the farm.”<sup>81</sup>

5       149. Sanderson’s misrepresentations about the risks of the evolution of antibiotic-  
 6 resistant bacteria stemming from agricultural use of antibiotics have been so egregious that a  
 7 neutral third party, the Council of Better Business Bureaus, National Advertising Division (NAD),  
 8 concluded on August 11, 2017 that key claims in Sanderson’s advertising are misleading and that  
 9 Sanderson should stop making those claims:

10      NAD also determined that given the lack of any consensus in the scientific  
 11 community over the safety of consuming meat from animals raised using antibiotics  
 12 the advertiser [Sanderson] should discontinue from its advertising language that  
 13 characterizes the ‘raised without antibiotics’ labels on competitive chicken  
 14 producers’ products as a ‘marketing gimmick,’ ‘just a trick to get you to pay more  
 15 money,’ a claim that is ‘full of hot air and doesn’t say much,’ ‘a phrase [that  
 16 marketers] invented to make chicken sound safer … and it doesn’t mean much’ and  
 17 similar language.<sup>82</sup>

18      150. However, Sanderson doubles down on its efforts to minimize the importance of “no  
 19 antibiotics” statements which are valuable to consumers, statements that Sanderson is not lawfully  
 20 allowed to use.

21      151. Sanderson contends, “...we are aware of no credible scientific research that  
 22 supports the notion that the use of antibiotics that are important to human medicine when treating  
 23 chickens contributes to the development of human bacterial infections that are resistant to  
 24

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25      22<sup>81</sup> This statement appeared on the homepage of Sanderson’s website, available at  
 26 https://sandersonfarms.com/, last visited August 30, 2019; on the hyperlink “Truth About Chicken”  
 27 that appeared right below the statement, to debunk “myths” about antibiotics, still available at  
 28 https://sandersonfarms.com/chicken-myths/#2nd, last visited July 2020; and in a video “How We  
 Grow Our Chicken,” available at https://sandersonfarms.com/our-chickens/animal-welfare/, last  
 visited July 2020. The grow-out video appears to have been revised in December 2019. Similar  
 statements are repeated by Sanderson in its Bob and Dale TV advertisements.

22<sup>82</sup> Advertising Self-Regulatory Council, Press Release, available at  
 23 http://www.asrcreviews.org/nad-recommends-sanderson-farms-discontinue-claims-about-tricks-  
 24 gimmicks-finds-company-can-support-certain-claims-referencing-federal-law/, last visited July  
 25 2020.

1 treatment....”<sup>83</sup>

2 152. Contrary to Sanderson’s assertion of “no credible evidence” many studies from  
 3 credible sources have concluded that the use of antibiotics in livestock risks rendering those  
 4 antibiotics less useful to humans:

- 5 a. The World Health Organization’s 2014 report, titled Antimicrobial Resistance:  
   6 Global Report on Surveillance, stated, “[t]he classes of antibiotics used in food-  
   7 producing animals and in human drugs are mostly the same, thereby increasing  
   8 the risk of emergence and spread of resistant bacteria, including those capable  
   9 of causing infections in both animals and humans. Food-producing animals are  
 10 reservoirs of pathogens with the potential to transfer resistance to humans.”<sup>84</sup>
- 11 b. The Centers for Disease Control and Prevention (CDC), U.S. Department of  
   12 Health and Human Services, summarized the threat to public health posed by  
   13 antibiotic use in agricultural operations, such as Sanderson Farms:  
   14   Antibiotics are widely used in food-producing animals, and according to data  
   15 published by FDA, there are more kilograms of antibiotics sold in the United  
   16 States for food-producing animals than for people [hyperlink omitted]. This use  
   17 contributes to the emergence of antibiotic-resistant bacteria in food-producing  
   18 animals. Resistant bacteria in food-producing animals are of particular concern  
   19 because these animals serve as carriers. Resistant bacteria can contaminate the  
   20 foods that come from those animals, and people who consume these foods can  
   21 develop antibiotic-resistant infections. Antibiotics must be used judiciously in  
   22 humans and animals because both uses contribute to not only the emergence,  
   23  
   24

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25  
 26 <sup>83</sup> See <https://sandersonfarms.com/policy-on-animal-welfare-and-antibiotic-use/>, last visited July  
 27 2020.

28 <sup>84</sup> World Health Organization, Antimicrobial Resistance: Global Report on Surveillance at 59,  
 available at [http://apps.who.int/iris/bitstream/10665/112642/1/9789241564748\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/112642/1/9789241564748_eng.pdf?ua=1), last  
 visited July 2020 (internal citations omitted).

but also the persistence and spread of antibiotic-resistant bacteria.<sup>85</sup>

- c. According to the President’s Council of Advisors on Science and Technology and its Report to the President on Combatting Antibiotic Resistance, “[s]ubstantial evidence demonstrates that use of antibiotics in animal agriculture promotes the development of antibiotic-resistant microbes in animals and that retail meat can be a source of microbes, including antibiotic-resistant microbes.”<sup>86</sup>
- d. A 2017 review of the research to date concludes, “taken together, the data support what the scientific community, national governments, and international organizations such as the World Health Organization, the Food and Agricultural Organization of the United Nations, and the World Organization for the Health of Animals (OIE) have long recognized: antimicrobial use on farms clearly contributes to the emergence of resistance and poses a human public health risk.”<sup>87</sup>
- e. Approximately 70% of all medically important antibiotics sold in the United States are for livestock use.<sup>88</sup>

<sup>85</sup> Antibiotic Resistance Threats in the United States (2013), at 36-37, available at <https://www.cdc.gov/drugresistance/pdf/ar-threats-2013-508.pdf>, last visited July 2020. The report also contains a glossary of terms related to antibiotic resistance.

<sup>86</sup> Report to the President on Combatting Antibiotic Resistance, Executive Office of the President of the United States (September 2014), at 50, available at [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast\\_carb\\_report\\_sept2014.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_carb_report_sept2014.pdf), last visited July 2020.

<sup>87</sup> Hoelzer et al., BMC Veterinary Research (2017) 13:211, “Antimicrobial drug use in food-producing animals and associated human health risks: what, and how strong, is the evidence?,” at 35, available at [https://link.springer.com/epdf/10.1186/s12917-017-1131-3?author\\_access\\_token=CbmecKjS4XscxgMn92-6rm\\_BpE1tBhCbnbw3BuzI2RMGFJmV0iy8Y06YFc2zc-R5jN1X3crDybEToB\\_CzXCpRozpkwGnxg9ydolzETVy02VGkppjTRq1V0MGiTqrqtB8g2U114wU4Fb9RacLAHWYIA%3D%3D](https://link.springer.com/epdf/10.1186/s12917-017-1131-3?author_access_token=CbmecKjS4XscxgMn92-6rm_BpE1tBhCbnbw3BuzI2RMGFJmV0iy8Y06YFc2zc-R5jN1X3crDybEToB_CzXCpRozpkwGnxg9ydolzETVy02VGkppjTRq1V0MGiTqrqtB8g2U114wU4Fb9RacLAHWYIA%3D%3D), last visited July 2020..

<sup>88</sup> The Pew Charitable Trusts, *Antibiotics and Animal Agriculture: A Primer* (February 2018) [https://www.pewtrusts.org/-/media/assets/2018/02/arp\\_antibiotics\\_and\\_animal\\_agriculture\\_a\\_primer.pdf](https://www.pewtrusts.org/-/media/assets/2018/02/arp_antibiotics_and_animal_agriculture_a_primer.pdf), last visited July 2020.

1                   f. An estimated 35,000 deaths and more than 2.8 million antibiotic-resistant  
 2                   infections occur in the U.S. each year, as estimated in 2019 by the CDC.<sup>89</sup> This  
 3                   is an increase in deaths and infections previously reported by the CDC in 2013.  
 4                   g. Children experience the ill-effects of antibiotic overuse in agriculture, most  
 5                   especially children younger than 5 years who become infected with antibiotic  
 6                   resistant bacteria.<sup>90</sup>

7                 153. Because Sanderson is aware of the studies cited above, Sanderson is aware of  
 8                   further research on the elevated risk of poultry workers carrying bacteria that is resistant to the  
 9                   same antibiotics that Sanderson admits to using.

10                154. Indeed, “credible evidence” of antibiotic-resistant bacteria has been found on  
 11                  Sanderson’s own chicken,<sup>91</sup> and this is consistent with the scientific research on antibiotic use in  
 12                  poultry. Sanderson’s routine use for every flock contributes to antibiotic resistance and this  
 13                  resistance poses a threat to public health during the pandemic, see *supra* ¶¶ 3-5.

14                **Allegations Concerning the Misrepresentation That the Products Do Not, and**  
 15                **Cannot, Contain Unnatural Residues**

16                155. A reasonable consumer believes that Sanderson’s “100% Natural” representation  
 17                  means that the Products do not and cannot contain residues, such as pharmaceutical or biological  
 18                  residues.

19                156. Specifically, Sanderson represents itself as “100% Natural” in multiple media and  
 20                  Sanderson asserts “no antibiotics to worry about here” in TV advertisements. On its website and

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 23                <sup>89</sup> Center for Disease Control, Antibiotic Resistance Threats in the United States, 2019, available  
 24                  at <https://www.cdc.gov/drugresistance/biggest-threats.html#:~:text=According%20to%20the%20report%2C%20more,people%20die%20as%20a%20result.>, last visited July 2020.

25                <sup>90</sup> American Academy of Pediatrics, Technical Report (December 2015), “Nontherapeutic Use of  
 26                  Antimicrobial Agents in Animal Agriculture: Implications for Pediatrics,” at e1673, available at  
<https://pediatrics.aappublications.org/content/pediatrics/136/6/e1670.full.pdf>, last July 2020.

27                <sup>91</sup> National Resources Defense Council, *Sanderson Farms: Spreading Deception & Antibiotic  
 28                  Resistance*, available at <https://www.nrdc.org/experts/sanderson-farms-spreading-deception-antibiotic-resistance>, last visited July 2020.

1 other advertisements, Sanderson states: “There’s Only Chicken In Our Chicken. Seriously.”<sup>92</sup> See  
 2 e.g. *supra* ¶ 95.

3       157. Sanderson also misrepresents to consumers the level of protection that they can  
 4 expect from the federal law regarding antibiotic residues. In one of the Bob and Dale TV  
 5 advertisements,<sup>93</sup> Sanderson says, “The thing is, by federal law, all chickens must be cleared of  
 6 antibiotics before they leave the farm . . . No antibiotics to worry about here.” This statement is  
 7 misleading because it omits the fact that USDA’s own process allows for chickens with  
 8 scientifically detectable antibiotic residues to be sold to consumers, as long as the detected  
 9 residues stay below the regulatory “tolerance.”

10     158. Sanderson’s representations regarding its chicken being free of residues are  
 11 misleading because Sanderson’s own laboratory testing indicates that the pharmaceuticals  
 12 Sanderson administers remain in some of the chickens after they leave the grow-out facilities and  
 13 arrive at processing plants to be slaughtered. The pharmaceuticals that Sanderson administers  
 14 include, but are not necessarily limited to, bacitracin, gentamicin, lincomycin, monensin, narasin,  
 15 oxytetracycline, penicillin, rofenaid (Rofenaid is a brand name; the drug is sulfadimethoxine  
 16 ormetprim), salinomycin, and virginiamycin.<sup>94</sup>

17     159. Sanderson conducts its own laboratory testing for the residues of pharmaceuticals  
 18 that Sanderson administers, and Sanderson’s own testing indicates positive results for the  
 19 pharmaceuticals that Sanderson administers to its flocks at various stages of their lives. These  
 20 positive pharmaceutical results include, but are not necessarily limited to, decoquinate, monensin,  
 21 narasin, nicarbazin, and salinomycin. Discovery may reveal additional residues.

22     160. Sanderson also uses anhydrous ammonia as a refrigerant to freeze processed  
 23 chickens, as observed by the Fifth Circuit Court of Appeals in finding against Sanderson regarding

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25  
 26     92 See <https://sandersonfarms.com/our-chickens/100-natural/>, last visited July 2020.

27     93 See <https://www.ispot.tv/brands/A1Z/sanderson-farms>, last visited July 2020).

28     94 Order, *Friends of the Earth et al. v. Sanderson Farms, Inc.*, No. 3:17-cv-03592 (RS), Dkt. 94  
 (N.D. Cal. Aug. 27, 2018).

1 Occupational Health and Safety Administration violations.<sup>95</sup>

2                   **Allegations Concerning the Reach and Scope of Sanderson's Misrepresentations**

3                   161. Sanderson began its “100% Natural” marketing campaign at least as far back as  
 4 2014. In its “I Believe” series of commercials which were released on YouTube, Sanderson  
 5 concluded by wishing viewers “Happy Fourth of July” “Happy Thanksgiving” “Merry Christmas  
 6 and Happy Holidays” with a voiceover “And we mean that 100%” along with the logo and “100%  
 7 Natural”:



162. The “Bob and Dale” commercials began airing in 2016.<sup>96</sup> They were broadcast in markets where Sanderson chicken was sold and were also put online.

163. The term “impressions” is used to measure how many times a commercial has been seen.

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<sup>95</sup> *Sanderson Farms, Inc. (Production Division) v. Occupational Safety and Health Review Comm.*, No. 19-60592 (5th Cir. July 9, 2020).

<sup>96</sup> The numbers were captured during the campaign on June 9, 2017 and have undoubtedly increased since then. Current numbers are not publicly available.

1       164. The Bob and Dale commercial “Labels” had 41,961,833 broadcast impressions.

2       165. The Bob and Dale commercial “Cooking Show” had 56,953,090 broadcast  
3 impressions.

4       166. The Bob and Dale commercial “Supermarket” had 108,214,520 broadcast  
5 impressions.

6       167. The Bob and Dale commercial “Marketing Guru” had 89,745,934 impressions.

7       168. The Bob and Dale commercial “Floppy Arms” had 116,413,306 broadcast  
8 impressions.

9       169. The Bob and Dale commercials were also seen millions of times online.

10      170. The Bob and Dale commercial “Labels” had 1,675,972 views on YouTube and  
11 32,000 on Facebook.

12      171. The Bob and Dale commercial “Cooking Show” had 310,223 views on YouTube  
13 and 2.5 million views on Facebook.

14      172. The Bob and Dale commercial “Supermarket” had 2,137,612 views on YouTube  
15 and 4 million views on Facebook.

16      173. The Bob and Dale commercial “Marketing Guru” had 1,021,876 views on  
17 YouTube and 711,000 views on Facebook.

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1           174. The Bob and Dale commercial “Floppy Arms” had 753,431 views on YouTube and  
 2 2.4 million views on Facebook.

3 <b>“Bob and Dale” Commercial</b>	4 <b>Broadcast Impressions</b>	5 <b>YouTube Views</b>	6 <b>Facebook Views</b>
7           Truth About Chicken – Labels Commercial	8           41,961,833	9           1,675,972	10          32,000
11          The Truth About Chicken - Marketing Guru Commercial:	12          89,745,934	13          1,021,876	14          711,000
15          The Truth About Chicken - Mr. Floppy Arms Commercial	16          116,413,306	17          753,431	18          2,400,000
19          The Truth About Chicken – Supermarket Commercial	20          108,214,520	21          2,137,612	22          4,000,000
23          Truth About Chicken - Cooking Show Commercial	24          56,953,090	25          310,223	26          2,900,000
27          TOTAL	28          332,518,683	29          5,899,114	30          10,043,000

14           175. The Bob and Dale commercials aired in 2016 and 2017 on widespread television  
 15 shows like *College Basketball* on CBS, *48 Hours* on CBS and *Sunday Morning* on CBS.

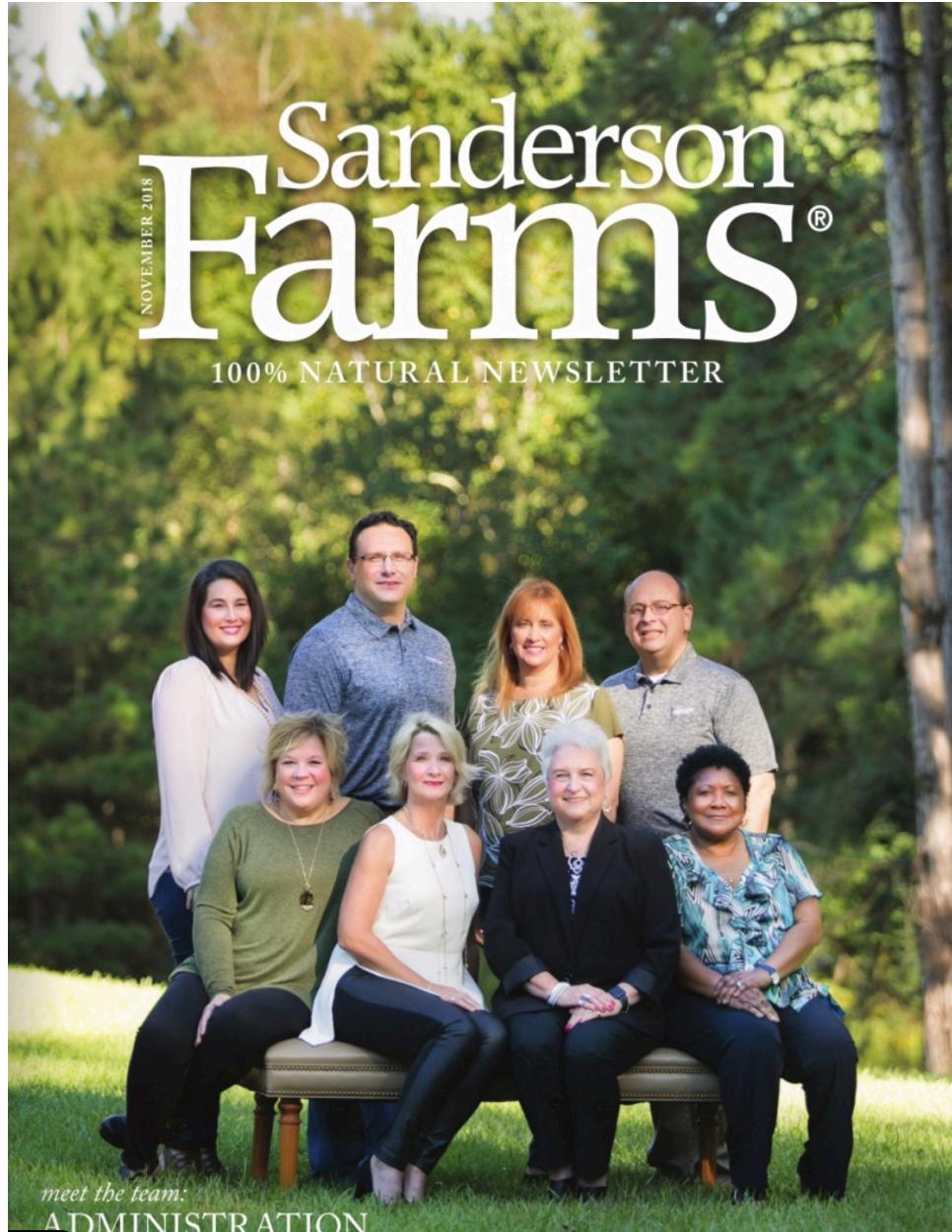
16           176. Sanderson’s print advertising also reached a wide audience.

17           177. For example, in 2018, Sanderson Farms also placed a print ad stating that its  
 18 chicken was “All Natural” in *Southern Living*, a national magazine which, according to its 2019  
 19 media guide, has print reach of 16,081,000 and a digital reach of 7.3 million unique users.<sup>97</sup>

20           178. Sanderson Farms also publishes a monthly magazine, the *Sanderson Farms 100% Natural Newsletter*, which as of 2018, had a circulation of 600,000 across 42 states, which has the  
 21 “100% Natural” claim as part of every title on the front of the magazine:  
 22  
 23  
 24  
 25

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26           97 Southern Living, 2019 Media Kit, available online at  
 27 [https://www.southernliving.com/sites/default/files/sl\\_2019\\_mediakit\\_final\\_lores.pdf](https://www.southernliving.com/sites/default/files/sl_2019_mediakit_final_lores.pdf), last visited  
 28 May 24, 2021.



179. The *Sanderson Farms 100% Natural Newsletter* is sufficiently prominent that it  
20 won numerous public relations awards including a Gold ADDY award.<sup>98</sup> The ADDY awards are

27 <sup>98</sup> Sanderson Farms press release May 7, 2018, available at <https://sandersonfarms.com/press-releases/sanderson-farms-awarded-twenty-public-relations-advertising-awards/>, last visited May 28, 2021.

1 the “advertising industry’s largest and most representative competition.”<sup>99</sup>

2 180. Sanderson also won several public relations awards for its *Sanderson Farms*  
 3 *Corporate Responsibility Report*, including one the Southern Public Relations Association of  
 4 Mississippi Judge’s Choice Award and an award from the Southern Public Relations  
 5 Federation.<sup>100</sup>

6 181. In addition, the “100% Natural” representation, in the form of pictures of the  
 7 products such as those in ¶ 77 *supra*, has appeared in millions of copies of flyers and circulars  
 8 where Sanderson Chicken is sold.

9 182. Such pictures have appeared in flyers and circulars for major supermarket chains  
 10 that sell Sanderson chicken, including Wal-Mart, Sam’s Club, Kroger (which owns much of Food  
 11 4 Less and other regional chains), Safeway, H-E-B (340 stores in Texas), Albertson’s (400 stores  
 12 in the United States), Von’s (200 stores in California and Nevada), Food 4 Less (337 stores in the  
 13 United States), and Harris Teeter (230 stores in the United States). Sanderson chicken is sold in  
 14 thousands of stores in the United States.

15 183. Every retail package of Sanderson chicken bears the phrase “100% Natural.” The  
 16 labels represent an enormous and widespread “100% Natural” message to consumers, which is the  
 17 message Sanderson encourages retailers to use in their ad circulars.<sup>101</sup>

18 184. In Sanderson’s 2019 annual report filed with the SEC,<sup>102</sup> it noted that its efforts to

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 21       <sup>99</sup> American Advertising Federation website, available at  
 22 [https://www.aaf.org/AAFMemberR/Press\\_Room/2011/ADDY\\_Winners.aspx?WebsiteKey=4a2b61a4-ccf6-4069-b7fb-9bea5afaf2f1](https://www.aaf.org/AAFMemberR/Press_Room/2011/ADDY_Winners.aspx?WebsiteKey=4a2b61a4-ccf6-4069-b7fb-9bea5afaf2f1), last visited May 24, 2021.

22       <sup>100</sup> Sanderson Farms press release, May 7, 2018, available at <https://sandersonfarms.com/press-releases/sanderson-farms-awarded-twenty-public-relations-advertising-awards/>, last visited May 24, 2021.

24       <sup>101</sup> Sanderson maintains product imagery at the following address  
 25 <https://sandersonfarms.com/corporate/media-library/product-imagery/>, last visited May 24, 2021.  
 26 There Sanderson states: “To help you advertise Sanderson Farms products at the retail level,  
 27 we’ve created a database of professional images for use in print and Internet advertisements to  
 28 promote the sale of Sanderson Farms *100% natural chicken.*”(emphasis added).

27       <sup>102</sup> Sanderson Farms 2019 Annual Report to Shareholders, available at  
 28 <http://ir.sandersonfarms.com/index.php/static-files/dd7be81d-df8a-4e22-b267-89cc6e9dcc89>, last  
 28 visited May 24, 2021.

1 distinguish itself in the market as a “natural” brand went back to 2004:

2 The Registrant has achieved a high level of public awareness and acceptance of its  
 3 products in its core markets. Brand awareness is an important element of the  
 4 Registrant’s marketing philosophy, and it intends to continue brand name  
 5 merchandising of its products. During calendar 2004, the Company launched an  
 6 advertising campaign designed to distinguish the Company’s fresh chicken  
 7 products from competitors’ products. The campaign noted that the Company’s  
 8 product is a natural product free from salt, water and other additives that some  
 9 competitors inject into their fresh chicken. The Company continues to use various  
 media to communicate this message today.

10 Sanderson also described its recent campaigns to promote itself as a “natural”  
 11 brand:

12 During fiscal 2016, the Company launched a multi-media advertising campaign  
 13 designed to explain and support the Company’s position regarding the judicious use  
 14 of antibiotics to prevent illness and treat chickens that become ill. During fiscal  
 15 2017, the Company launched a multi-media advertising campaign designed to  
 16 dispel many of the myths about poultry production. The Company regularly  
 17 evaluates the success of this campaign and, while not currently advertising  
 18 aggressively on television, expects to continue to use the campaign in other media,  
 19 at least for the near term.

## 16 CAUSES OF ACTION

### 17 FIRST CAUSE OF ACTION

#### 18 **Violation of the Unfair Competition Law, 19 Cal. Bus. & Prof. Code § 17200, *et seq.***

20 185. The allegations made in all preceding paragraphs are re-alleged and incorporated  
 21 by reference herein.

22 186. Sanderson engaged in unlawful, unfair, and/or fraudulent conduct under the  
 23 California UCL, California Business & Professions Code § 17200, *et seq.*, by advertising and  
 24 labeling its Chicken Products as “100% Natural,” plus other representations listed above, when in  
 25 fact, Sanderson knows that the process by which it creates its Chicken Products and the resulting  
 26 product itself does not meet reasonable consumer expectations for a product marketed as “100%  
 27 Natural.”

1       187. Sanderson's conduct is unlawful because, it violates the Poultry Products  
 2 Inspection Act, 21 U.S.C. § 451 et seq., which prohibits, among other things, labeling that is false  
 3 or misleading in any particular, § 453(h) and its implementing regulations, including 9 C.F.R. §  
 4 381.129(a), requiring that, "No poultry product . . . shall have any false or misleading labeling . . ."  
 5 Sanderson's conduct is unlawful because it violates the Federal Trade Commission Act, 15  
 6 U.S.C. § 45, which prohibits unfair or deceptive acts or practices affecting commerce, and  
 7 prohibits any false advertisements related to food, § 52. Sanderson's conduct is unlawful because  
 8 it violates the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301, which prohibits a food supplier  
 9 from making false, fraudulent or misleading representations to consumers regarding consumer  
 10 products. Sanderson's conduct is unlawful because it violates the California False Advertising  
 11 Law, California Business & Professions Code § 17500 *et seq.*, described more fully in the Second  
 12 Claim for Relief below. Sanderson's conduct is unlawful because it violates express warranty law,  
 13 Cal. Comm. Code § 2313, which prohibits Sanderson from making any affirmation of fact or  
 14 promise to a buyer for goods when the goods do not conform to the description provided.  
 15 Sanderson's conduct is unlawful because it violates the California Consumers Legal Remedies  
 16 Act, Cal. Civ. Code § 1750 *et seq.*, which prohibits representing that the Products have  
 17 characteristics, uses or benefit that they do not have; representing that the products are of a  
 18 particular standard, quality, or grade when they are not; advertising the products with the intent  
 19 not to sell them as advertised. Sanderson's conduct is unlawful because it violates the California  
 20 Meat and Poultry Inspection Act ("CMPIA"), Cal. Food & Agr. Code § 1 *et seq.*, which imposes  
 21 and enforces requirements "equal to those imposed and enforced under the . . . Poultry Products  
 22 Inspection Act." Cal. Food & Agr. Code § 18692. Like the PPIA, California's poultry regulations  
 23 deem misbranded any poultry product with labeling that is "false or misleading in any particular."  
 24 Cal. Food & Agr. Code § 18781.

25       188. Sanderson's conduct is unfair in that it offends established public policy and/or is  
 26 immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiffs,  
 27 Plaintiffs' members, and California consumers. The harm to Plaintiffs and the public arising from  
 28 Sanderson's conduct outweighs any legitimate benefit Sanderson derived from the conduct.

1 Sanderson's conduct undermines and violates the stated spirit and policies underlying the FAL and  
 2 other legal regulations as alleged herein. Sanderson's conduct is unfair because it routinely uses  
 3 pharmaceuticals, including antibiotics, to all birds in a flock, throughout the majority of their lives,  
 4 which sometimes results in residues remaining in the product. Sanderson's conduct is unfair  
 5 because of its routine use of multiple antibiotics, thus contributing to the growth of antibiotic-  
 6 resistant bacteria. Sanderson's conduct is unfair because it confines birds in crowded sheds in  
 7 inhumane conditions and Sanderson's plants have been cited for excessive use of force.

8       189. Sanderson's advertising actions and practices with regard to the food product and  
 9 process constitute fraudulent business practices in violation of the UCL because, among other  
 10 things, they are likely to deceive reasonable consumers. For example, Sanderson marketed its  
 11 chicken products as "100% Natural" when in fact it is not. As a direct and proximate result of  
 12 Sanderson's violations, Plaintiffs suffered injury in fact because they were forced to divert  
 13 substantial organizational resources away from their core missions. Sanderson's unlawful  
 14 encouragement of such practices have frustrated Plaintiffs' efforts to promote transparency in the  
 15 food system.

16       190. Plaintiffs seek (a) injunctive relief in the form of an order requiring Sanderson to  
 17 cease the acts of unfair competition alleged here and to correct its advertising, promotion, and  
 18 marketing campaigns; (b) the payment of Plaintiffs' attorneys' fees and costs pursuant to, inter  
 19 alia, California Code of Civil Procedure Section 1021.5.; and (c) interest at the highest rate  
 20 allowable by law.

21       191. Plaintiffs do not seek to impose, directly by themselves or indirectly through any  
 22 state agency, requirements with regard to the premises, facilities or operations that are in addition  
 23 to, or different than, the requirements of the Poultry Products Inspection Act (PPIA), 21 U.S.C.  
 24 § 451 et seq.

25       192. Plaintiffs do not seek to impose, directly by themselves or through any state  
 26 agency, requirements with regard to marking, labeling, packaging or ingredient requirements  
 27 found by the USDA Secretary to unduly interfere with the free flow of poultry products in  
 28 commerce that are in addition to, or different than, the PPIA.

## **SECOND CAUSE OF ACTION**

## **Violation of the False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq.**

193. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

194. Sanderson publicly disseminated untrue or misleading advertising, or intended not to sell the Chicken Products as advertised, in violation of California FAL, California Business & Professions Code § 17500, *et seq.*, by advertising its Chicken Products as “100% Natural,” plus other representations listed above, when in fact, Sanderson knew, or in the exercise of reasonable care should have known, that the process by which it creates its Chicken Products and the product itself does not meet reasonable consumer expectations for a product marketed as “100% Natural.”

195. As a direct and proximate result of Sanderson's violations, Plaintiffs suffered injury in fact because they were forced to divert substantial organizational resources away from their core missions. Sanderson's unlawful practices have frustrated Plaintiffs' efforts to promote transparency in the food system on behalf of the general public.

196. Plaintiffs seek (a) injunctive relief in the form of an order requiring Sanderson to cease the acts of unfair competition alleged here and to correct its advertising, promotion, and marketing campaigns; (b) the payment of Plaintiffs' attorneys' fees and costs pursuant to, inter alia, California Code of Civil Procedure Section 1021.5.; and (c) interest at the highest rate allowable by law.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves, their members, and the general public, pray for judgment as follows:

- A. Declare that Sanderson violated the UCL and the FAL;
- B. Order an award of injunctive relief as permitted by law or equity, including enjoining Sanderson from continuing the unlawful practices as set forth here, and ordering Sanderson to engage in a corrective advertising campaign;

- C. Order Sanderson to pay fees and litigation costs, including a reasonable allowance for fees for Plaintiffs' attorneys and experts, and reimbursement of Plaintiffs' expenses, pursuant to California Code of Civil Procedure Section 1021.5, the common-law private-attorney-general doctrine, or any other available statute or doctrine;
- D. Order Sanderson to pay both pre- and post-judgment interest on any amounts awarded; and
- E. Order Sanderson to pay nominal damages; and
- F. Order such other and further relief as may be just and proper.

Dated: May 26, 2021

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